

CONTRACT #5
RFS # 309.01-017

Tennessee Treasury
Department

VENDOR:
TIAA-CREF Tuition
Financing, Inc.

REQUEST: NON-COMPETITIVE AMENDMENT

RECEIVED

MAR 15 2005

FISCAL REVIEW

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT
CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

309.01-017

STATE AGENCY NAME :

Tennessee Treasury Department

SERVICE CAPTION :

Provides administrative and investment management services for the Savings Plan component of the Baccalaureate Education System Trust Program.

CONTRACT #

FA-00-13872

PROPOSED AMENDMENT #

03

CONTRACTOR :

TIAA-CREF Tuition Financing, Inc.

CONTRACT START DATE :

December 2, 1999

CURRENT, LATEST POSSIBLE END DATE :
(including ALL options to extend)

March 28, 2010

CURRENT MAXIMUM LIABILITY :

\$0.00

LATEST POSSIBLE END DATE WITH PROPOSED AMENDMENT :
(including ALL options to extend)

March 28, 2007

TOTAL MAXIMUM COST WITH PROPOSED AMENDMENT :
(including ALL options to extend)

\$0.00

APPROVAL CRITERIA :
(select one)

use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of the proposed additional service and amendment effects : *See attached memo dated March 14, 2005*

(2) explanation of need for the proposed amendment :

(3) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

(4) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(5) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:

☐

Documentation Not Applicable to this Request

☐

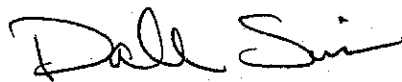
Documentation Attached to this Request

(6) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

(7) justification of why the F&A Commissioner should approve a Non-Competitive Amendment :

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE:

March 14, 2005

STATE OF TENNESSEE

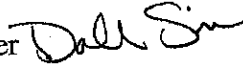


DALE SIMS
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

MEMORANDUM

TO: The Honorable M. D. Goetz, Jr., Commissioner
Department of Finance and Administration

FROM: Dale Sims, Treasurer 
Department of the Treasury

DATE: March 14, 2005

RE: *Noncompetitive Amendment Request – BEST Savings Plan Administrative and Investment Management Services Contract Between the Tennessee Treasury Department and TIAA-CREF Tuition Financing, Inc.*

BACKGROUND

The Tennessee Baccalaureate Education System Trust Program (BEST) was established by the Tennessee General Assembly by Public Acts of 1996, Chapter 991 for the purpose of making higher education more affordable for the citizens of Tennessee by offering an educational services/pre-paid plan. The Act was amended by the General Assembly by Public Acts of 1999, Chapter 233 for the purpose of offering an Educational Savings Plan component to the BEST Program. The Act gives the State the power and authority to establish and operate the Savings Plan, to enter into contracts with purchasers, and to serve as the trustees of the trust fund established to receive contributions to the Savings Plan.

Pursuant to the Act, the State has the power to enter into contracts with service providers for the provision of all or any part of the services necessary for the management and operation of the Savings Plan. See, Tenn. Code Ann. § 49-7-805(4). The State determined that it was in the best interest of the BEST Program to contract out the implementation and management of the Savings Plan and the investment of the assets of the trust fund to an outside service provider. Accordingly, the State, through the Tennessee Treasury Department, procured the services of TIAA-CREF Tuition Financing, Inc. pursuant to the RFP procurement process.

The compensation paid to TIAA-CREF for its services are charged to and paid from the Savings Plan assets that belong to citizens electing to participate in the Plan. Accordingly, no State funds are used to pay or otherwise fund the compensation payable to TIAA-CREF under the contract. Currently, the compensation to which TIAA-CREF is entitled is an aggregate fee at the annual rate of 0.95% of the average daily net assets of

the Plan (the Management Fee). Other than the management fee, TIAA is responsible for paying all of its direct and indirect costs and expenses in connection with the contract, the Savings Plan and the services provided thereunder.

Under the contract, TIAA-CREF had agreed to expend \$1,500,000 for marketing and promotional activities for the Savings Plan during the period from December 2, 1999 through March 28, 2001. During each one-year period ending on the second and third anniversaries of the Savings Plan start date, TIAA-CREF agreed to expend an additional \$750,000.00 for marketing and promotional activities for the Plan. For each one-year period thereafter during the term of the contract, TIAA had agreed to expend an additional \$375,000.00 for marketing and promotional activities. To date, TIAA-CREF has expended a total of \$2,386,714.00 in marketing and promotional activities, thereby leaving an outstanding marketing and promotional expenditure obligation to the State of approximately \$1,075,286.00 as of December 31, 2004.

I.

DESCRIPTION OF THE PROPOSED ADDITIONAL SERVICE AND AMENDMENT EFFECTS

The current contract expires on March 28, 2005. However, the State reserved the right under the contract to extend the contract term for up to an additional five years. The right to extend the contract term for up to five additional years was a part of the Request of Proposals issued in 1999, which was approved by the Department of Finance and Administration and the Comptroller of the Treasury. Given this bargaining opportunity, the Treasury Department discussed with TIAA-CREF ways of improving the quality of the Savings Plan Program both in terms of price and plan features.

Under the proposed amendment, the State would extend the term of the contract through March 28, 2007. Commencing on the new extended term (March 29, 2005), TIAA-CREF's management fee would be reduced by 15 basis points. TIAA-CREF would be required to implement a new investment option for participants known as the Guaranteed Funding Agreement Option and would also be required to deliver online enrollment functionality for participants. In exchange, the State would agree to reduce TIAA-CREF's outstanding marketing obligation to the Program by \$400,000.

The Guaranteed Option would provide the Program with a guaranteed return of principal and an annual minimum rate of return equal to approximately three to four percent per annum with the opportunity for additional returns as may be periodically declared in advance by TIAA-CREF Life. The rate of such additional returns is declared in advance by TIAA-CREF Life for a period of up to twelve months. The Program would be permitted to make withdrawals under the Guaranteed Option at any time without penalty to cover distributions from participants' accounts that have invested in the Guaranteed Option.

II.

EXPLANATION OF NEED FOR THE PROPOSED AMENDMENT

These changes would enhance the Program for current participants and make the Program more attractive to families that are interested in saving for the expenses of higher education. The proposed changes are: a reduction in the management fee charged by TIAA-CREF, the implementation of a Guaranteed Investment Option for participants, and the delivery and maintenance of an online enrollment functionality in exchange for a \$400,000 reduction in TIAA-CREF's outstanding marketing obligation. Although the proposed amendment would reduce TIAA's outstanding marketing obligation, TIAA would continue to be required to expend at least \$375,000.00 per year for marketing and promotional activities for the Program.

The Guaranteed Investment Option would provide the stability that many people may want for at least a portion of their college savings funds. It provides an Investment Option to investors who can tolerate little risk, including those who have traditionally saved using fixed-income vehicles and are willing to accept returns that may be lower than those offered in other Investment Options. In addition, investors with shorter investment time frames may find this option appealing, as will investors who want a balanced account by combining this option with one of the more aggressive options.

III.

NAME AND ADDRESS OF CONTRACTOR'S PRINCIPAL OWNER(S)

The Contractor is a for-profit corporation that is owned by a publicly traded company, which means that the Contractor is owned by numerous individual investors who have purchased its stock.

IV.

**DOCUMENTATION OF OIR ENDORSEMENT OF THE SUBJECT
PROCUREMENT REQUEST (REQUIRED ONLY IF THE SERVICE INVOLVES
INFORMATION TECHNOLOGY)**

N/A

V.

**DOCUMENTATION OF DEPARTMENT OF PERSONNEL ENDORSEMENT OF
THE SUBJECT PROCUREMENT REQUEST (REQUIRED ONLY IF THE
SERVICE INVOLVES TRAINING FOR STATE EMPLOYEES)**

N/A

VI.

**DESCRIPTION OF PROCURING AGENCY EFFORTS TO IDENTIFY
REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES
(RATHER THAN TO USE NON-COMPETITIVE NEGOTIATION)**

The current contract resulted from a Request for Proposal issued by the State in 1999. The purpose of the procurement was for the implementation and management of the Savings Plan and for the investment of the Plan's assets. This amendment is merely an extension of the services currently being provided by the contractor.

VII.

**JUSTIFICATION OF WHY THE STATE SHOULD APPROVE A NON-
COMPETITIVE AMENDMENT**

As stated above, the amendment is merely an extension of the services currently being provided by the contractor, i.e., to implement and manage the Savings Plan and to invest the Plan's assets. This amendment would enhance the Savings Plan for current participants and make the Plan more attractive to families interested in participating, thereby encouraging citizens to save for their children's college education. Accordingly, amending the contract to provide these services would be in the best interest of the State and program participants.

STATE OF TENNESSEE



DALE SIMS
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

MEMORANDUM

RECEIVED

TO: The Honorable M. D. Goetz, Jr., Commissioner
Department of Finance and Administration

MAR 15 2005

FROM: Dale Sims, Treasurer *Dale Sims*
Department of the Treasury

FISCAL REVIEW

DATE: March 14, 2005

RE: *Memorandum of Explanation for Submitting Noncompetitive Amendment Request Less Than Sixty (60) Days Prior to Contract Amendment Start Date: BEST Savings Plan Administrative and Investment Management Services Contract Between the Tennessee Treasury Department and TIAA-CREF Tuition Financing, Inc.*

In 1999, the State, through the Tennessee Treasury Department, procured the services of TIAA-CREF Tuition Financing, Inc. to implement and manage the Savings Plan Component of the Tennessee Baccalaureate Education System Trust Program (BEST) and to invest the assets of the Savings Plan. The services were procured through the RFP procurement process. The purpose of the Savings Plan is to encourage citizens of Tennessee to save for their children's college education.

The term of the contract was from December 2, 1999 and ending on the fifth anniversary date of the Savings Plan Start Date, i.e., March 28, 2005. However, the contract specifically reserved to the State the right to extend the contract for up to five additional years. To exercise this extension option, the State was required to provide notice of intent to extend to TIAA-CREF at least 30 days prior to the contract's expiration date, or by February 28, 2005.

Pursuant to this contract provision, the Treasury Department entered into discussions with TIAA-CREF regarding the circumstances under which the department was willing to extend the current agreement. The department's goal in these discussions was to provide savings plan participants with an improved product at a better price. Should that goal not be achieved, the department's plan was to extend the contract under the same terms for a period of time sufficient to permit a new procurement process to take place, probably one year. After exchanging a series of proposals and counter-proposals, by February 28th changes to the product had been agreed to that made it clear that extension

for a period of time longer than a "procurement period" was in the state's interest. For this reason, the state provided notice of extension to TIAA-CREF with five contract adjustments:

- Addition of third investment option within the product;
- Addition of online enrollment and account access functionality;
- Reduction of fees from 95 basis points of assets to 85 basis points;
- Reduction of TIAA-CREF's outstanding marketing obligation by \$400,000; and
- Extension of the contract for one year with four additional one-year extension options.

In reaction to this notice, TIAA-CREF proposed a definitive 2-year extension, with no additional contract extension options included. In return, TIAA-CREF offered the above product changes with an additional 5 basis point reduction in fees for participants. This means fees would be reduced from the current 95 basis points to 80 basis points. The department recommends extension of this contract under these terms as being in the best interest of plan participants.

The timing of this request was delayed due to the nature of negotiations with the current provider. In order to achieve the goal of providing savings plan participants with an improved product at a better price, it was necessary to allow negotiations to continue up until the "deadline" for notice of contract extension. This was done with the knowledge that if the goal could not be achieved through negotiation, the state had a unilateral right to extend the contract under the same conditions for a short period in order to permit a procurement process to take place. While the timing is unfortunate, we believe this strategy permitted the state to improve this product in terms of quality, scope of service, price and competitiveness.

If you have any questions or need any additional information, please contact Mrs. Janice Cunningham or me at 741-2956.

AMENDMENT NUMBER 2
TO CONTRACT FA-00-13872-00
BETWEEN THE
STATE OF TENNESSEE, BACCALAUREATE EDUCATION SYSTEM TRUST
AND
TIAA-CREF TUITION FINANCING, INC.

WHEREAS, the State of Tennessee, Baccalaureate Education System Trust (the "State"), and TIAA-CREF Tuition Financing, Inc. (the "Contractor") entered into Contract No. FA-00-13872-00 on December 2, 1999 for the provision of implementation and management services to the State in connection with the Educational Savings Plan (the "Savings Plan") component of the Tennessee Baccalaureate Education System Trust Program (the "BEST Program") and the investment of the assets of the Savings Plan, and

WHEREAS, the said parties desire to amend said Contract in the manner described below,

NOW THEREFORE, the parties hereby amend said Contract as follows:

1. Section A.8 is amended as follows:

a. By deleting therefrom the following:

" b. *The Savings Plan Investment Policy and Investment Objectives.* Prior to the Savings Plan Start Date, the State shall prepare and adopt an appropriate investment policy for the Savings Plan, along with investment guidelines and procedures (collectively referred to as the "Investment Policy"). At the State's request, the Contractor shall assist the State in the preparation of such policy.

In accordance with the Act and the Rules, the parties acknowledge and understand that the investment policy and objective of the Savings Plan is to achieve investment returns over the applicable investment period (i.e., the period from the making of a contribution through the date on which a withdrawal for qualified higher education expenses is projected) that are at least equal to the rate

of increase in the costs of higher education over that period. The parties acknowledge that no guarantee exists of any return of amounts contributed by Purchasers or any income or earnings thereon, and that the investment of contributions made under the Savings Plan is subject to market risks, and that the Mutual Funds and the Age Bands (both of which are described in subsection (c) below) and the Purchasers are subject to a risk of loss in any particular annual or other period (including the applicable investment horizon).

c. *The Age Bands, the Mutual Funds, the Plan Fund and the Administrative Fund.* The proceeds from the contributions made to Savings Accounts pursuant to Savings Contracts shall be allocated by the State to the plan fund of the Trust Fund which holds all assets of the Trust Fund excluding the assets held in the Administrative Fund (as defined below) (the "Plan Fund"), and to the applicable Age Bands, which are each a portion of the assets of the Plan Fund established for Beneficiaries born in specified years in accordance with the allocation guidelines (as described in Section A.9.a below and as shall be described in the Savings Plan disclosure booklet and the Savings Contract) (the "Age Bands"). The State shall be the sole trustee of the Trust Fund and the Contractor shall invest Trust Fund assets held in the Plan Fund exclusively in shares representing ownership interests in the following TIAA-CREF Institutional Mutual Funds: the TIAA-CREF Institutional Growth Equity Fund, the TIAA-CREF Institutional Bond Fund and the TIAA-CREF Institutional Money Market Fund (collectively, the "Mutual Funds") and such other mutual fund or mutual funds as the State and the Contractor may hereafter agree upon in writing. In addition, the State shall cause the Trust Fund to establish an account with the TIAA-CREF Institutional Money Market Fund (the "Money Market Fund") in the name of the Trust Fund, and all funds allocated to the administrative fund of the Trust Fund (the "Administrative Fund") shall be deposited in the Money Market Fund.

All non-qualified withdrawal penalties and any other penalties or fees charged by the Savings Plan to Savings Accounts or payable by Purchasers under the Savings Plan shall be deposited in the Administrative Fund. Withdrawals from the Administrative Fund may be made from time to time by the State for the reimbursement of direct and indirect costs and expenses of the State relating to the Savings Plan."

b. By substituting instead the following:

"b. *The Savings Plan Investment Policy and Investment Objectives.* Prior to the Savings Plan Start Date, the State shall prepare and adopt an appropriate investment policy for the Savings Plan, along with investment guidelines and procedures (collectively referred to as the "Investment Policy"). At the State's request, the Contractor shall assist the State in the preparation of such policy.

In accordance with the Act and the Rules, the parties acknowledge and understand that the investment policy and objective of the Savings Plan is to achieve investment returns over the applicable investment period (i.e., the period from the making of a contribution through the date on which a withdrawal for qualified higher education expenses is projected) that are at least equal to the rate of increase in the costs of higher education over that period. The parties acknowledge that no guarantee exists of any return of amounts contributed by Purchasers or any income or earnings thereon, and that the investment of contributions made under the Savings Plan is subject to market risks, and that the 100% Equity Option and the Age-Based Asset Allocation Option, the Mutual Funds and the Age Bands (all of which are described in subsection (c) below) and the Purchasers invested in the 100% Equity Option or the Age-Based Asset Allocation Option are subject to a risk of loss in any particular annual or other period (including the applicable investment horizon).

c. *The Investment Options, the Age Bands, the Mutual Funds, the Plan Fund and the Administrative Fund.* The proceeds from the contributions made to Savings Accounts pursuant to Savings Contracts shall be allocated by the State to the plan fund of the Trust Fund which holds all assets of the Trust Fund excluding the assets held in the Administrative Fund (as defined below) (the "Plan Fund"). The assets of the Plan Fund shall then be allocated by the State to the Age-Based Asset Allocation Option (as defined below) or the 100% Equity Option (as defined below) (the "Investment Options"), in accordance with the Investment Option elections made by Purchasers in the Savings Contracts, any applicable Allocation Guidelines (as defined in Section A.9.a below), and, with respect to the Age-Based Asset Allocation Option, to the applicable Age Bands (which are each a portion of the assets of the Plan Fund within the Age-Based Asset Allocation Option established for Beneficiaries born in specified years in accordance with the Allocation Guidelines (as described in Section A.9.a below and as shall be described in the Savings Plan disclosure booklet and the Savings Contract) (the "Age Bands")). The State shall be the sole trustee of the Trust Fund and the Contractor shall invest Trust Fund assets held in the Plan Fund as follows:

(1) Assets allocated to the "Age-Based Asset Allocation Option" shall be invested exclusively in shares representing ownership interests in the following TIAA-CREF Institutional Mutual Funds as set forth in Annex A: the TIAA-CREF Institutional Growth Equity Fund, the TIAA-CREF Institutional Bond Fund, the TIAA-CREF Institutional Money Market Fund, the Institutional Growth and Income Fund, the Institutional Equity Index Fund and the Institutional International Equity Fund (collectively, the "Age-Based Asset Allocation Option Mutual Funds") and such other mutual fund or mutual funds as the State and the Contractor may hereafter agree upon in writing; and

(2) Assets allocated to the "100% Equity Option" shall be invested exclusively in shares representing ownership interests in the following TIAA-CREF Institutional Mutual Funds as set forth in Annex A: the TIAA-CREF Institutional International Equity Fund and the TIAA-CREF Institutional Growth and Income Fund (collectively, the "100% Equity Option Mutual Funds"; and, together with the Age-Based Asset Allocation Option Mutual Funds, the "Mutual Funds") and such other mutual fund or mutual funds as the State and the Contractor may hereafter agree upon in writing.

In addition, the State shall cause the Trust Fund to establish an account with the TIAA-CREF Money Market Fund in the name of the Trust Fund, and all funds allocated to the administrative fund of the Trust Fund (the "Administrative Fund") shall be deposited in the TIAA-CREF Money Market Fund.

All non-qualified withdrawal penalties and any other penalties or fees charged to Savings Accounts or payable by Purchasers under the Savings Plan shall be deposited in the Administrative Fund. Withdrawals from the Administrative Fund may be made from time to time by the State for the reimbursement of direct and indirect costs and expenses of the State relating to the Savings Plan."

2. Section A.8 is further amended as follows:

a. By deleting therefrom the following:

"f. Contributions. The Contractor shall direct the investment of contributions made to the Plan Fund in accordance with the allocation guidelines for the applicable Age Band (as set forth in Annex A).

g. Crediting of Contributions. Contributions to the Savings Plan received before the close of trading on the New York Stock Exchange ("NYSE") (usually 4:00 p.m., Eastern Time) on any day on which the NYSE is open for trading (a "Business Day") shall be credited to the Savings Account to which the contribution is made on the same day. Contributions received at or after the close

of trading on the NYSE or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be credited that same day to the applicable Age Band at the Net Asset Value per share (as defined in Paragraph h below) calculated for that day for such Age Band in accordance with Paragraph h below. A contribution shall be credited to a Savings Account (i) once the documentation with respect to the Savings Account is properly completed and such contribution is in good order and (ii) at a share price equal to the Net Asset Value per share (as defined below) next calculated for the applicable Age Band after the contribution is credited."

b. By substituting instead the following:

"f. *Contributions.* The Contractor shall direct the investment of contributions made to the Plan Fund to: (i) the Age-Based Asset Allocation Option in accordance with the Allocation Guidelines for the applicable Age Band of the Age-Based Asset Allocation Option; and (ii) the 100% Equity Option in accordance with the Allocation Guidelines for the 100% Equity Option.

g. *Crediting of Contributions.* Contributions to the Savings Plan received before the close of trading on the New York Stock Exchange ("NYSE") (usually 4:00 p.m., Eastern Time) on any day on which the NYSE is open for trading (a "Business Day") shall be credited to the Savings Account to which the contribution is made on the same day. Contributions received at or after the close of trading on the NYSE or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be credited that same day to: (i) the applicable Age Band of the Age-Based Asset Allocation Option at the Net Asset Value per share (as defined in Paragraph h below) calculated for that day for each of the Mutual Funds in which the Age Band is invested; and (ii) the 100% Equity Option at the Net Asset Value per share calculated for that day for each of the Mutual Funds in which the 100% Equity Option is invested. A contribution shall

be credited to a Savings Account (i) once the documentation with respect to the Savings Account is properly completed and such contribution is in good order and (ii) at a share price equal to the Net Asset Value per share next calculated for the applicable Investment Option (or for the applicable Age Band of the Age-Based Asset Allocation Option) after the contribution is credited."

3. Section A.8.i. is amended as follows:

a. By deleting therefrom the following:

"i. *Withdrawals.* The Contractor shall process requests for withdrawals and refunds from the Savings Accounts in compliance with the Act, the Rules, Section 529 and the regulations promulgated by the Internal Revenue Service, as amended from time to time. The Net Asset Value per share for an Age Band applicable to a withdrawal or refund shall be the Net Asset Value per share next calculated for such Age Band once such withdrawal or refund request is received in good order."

b. By substituting instead the following:

"i. *Withdrawals.* The Contractor shall process requests for withdrawals and refunds from the Savings Accounts in compliance with the Act, the Rules, Section 529 and the regulations promulgated by the Internal Revenue Service, as amended from time to time. The Net Asset Value per share for each of the Mutual Funds in which the 100% Equity Option is invested and for each of the Mutual Funds in which the pertinent Age Band of the Age-Based Allocation Option is invested, applicable to a withdrawal or refund shall be the Net Asset Value per share next calculated once such withdrawal or refund request is received in good order."

4. Section A.9 is amended as follows:

a. By deleting therefrom the following:

"a. *Allocation Guidelines.* The Contractor shall invest the assets of the Trust Fund held in the Plan Fund allocated to each Age Band (including new

contributions allocated to each Age Band and the net earnings of each Age Band) in accordance with the percentage ranges determined in accordance with this Section and as set forth in Annex A (the "Allocation Guidelines"). Unless changed by the State in accordance with Paragraph b below, the Allocation Guidelines for each Age Band for calendar year 2000 shall be as set forth in Annex A. All Allocation Guidelines shall be in the format set forth in Annex A. On or before November 1 of each calendar year during the term of this Contract commencing with November 1, 2001, the Contractor shall submit to the State, for the State's consideration, the Contractor's recommended Allocation Guidelines for each Age Band for the following calendar year. The Contractor shall make such recommendations consistent with the objective of the Savings Plan set forth in the Savings Plan disclosure booklet and the risk levels deemed appropriate by the State. At the request of the State, the Contractor shall consult with the State and may thereafter propose revised Allocation Guidelines for the following calendar year. On or before December 1 of each such calendar year, the State shall either notify the Contractor that the State approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the State, for the next calendar year or shall deliver to the Contractor revised Allocation Guidelines for such year that the State deems appropriate."

b. By substituting instead the following:

"a. *Allocation Guidelines.* The Contractor shall invest the assets of the Trust Fund held in the Plan Fund allocated to the Age-Based Asset Allocation Option to each Age Band (including new contributions allocated to each Age Band and the net earnings of each Age Band) in accordance with the percentage ranges determined in accordance with this Section and as set forth in Annex A (the "Age-Based Asset Allocation Guidelines"). The Contractor shall invest the

assets of the Trust Fund held in the Plan Fund allocated to the 100% Equity Option in accordance with the percentage ranges determined pursuant to this Section and set forth in Annex A (the "100% Equity Allocation Guidelines" and together with the Age-Based Asset Allocation Guidelines, the "Allocation Guidelines"). Unless changed by the State in accordance with Paragraph b below, the Allocation Guidelines for each Age Band of the Age-Based Asset Allocation Option and for the 100% Equity Option for calendar year 2002 shall be as set forth in Annex A. All Allocation Guidelines shall be in the format set forth in Annex A. On or before November 1 of each calendar year during the term of this Contract commencing with November 1, 2001, the Contractor shall submit to the State, for the State's consideration, the Contractor's recommended Allocation Guidelines for each Age Band of the Age-Based Asset Allocation Option and for the 100%-Equity Option for the following calendar year. The Contractor shall make such recommendations consistent with the objective of the Savings Plan set forth in the Savings Plan disclosure booklet and the risk levels deemed appropriate by the State. At the request of the State, the Contractor shall consult with the State and may thereafter propose revised Allocation Guidelines for the following calendar year. On or before December 1 of each such calendar year, the State shall either notify the Contractor that the State approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the State, for the next calendar year or shall deliver to the Contractor revised Allocation Guidelines for such year that the State deems appropriate."

5. Section A.17 is amended as follows:

a. By deleting therefrom the following:

"17. Quarterly Operational Performance Reports and Performance Measurement.

a. *Quarterly Operational Performance Reports.* The Contractor shall provide operational performance measurement reports to the State on a quarterly basis within sixty (60) calendar days after the end of each calendar quarter after the Savings Plan Start Date. Each such report shall provide data regarding the operation of the Savings Plan with respect to the following:

QUARTERLY PERFORMANCE MEASUREMENTS	
Correspondence	Financial Correspondence Timeliness The percentage of financially-related correspondence sent within 2 Business Days of receipt
	Non-Financial Correspondence Timeliness The percentage of non-financial correspondences sent within 7 Business Days of receipt
Check Processing	Accuracy of Posting Checks The percentage of checks accurately posted to a matching Account with the correct amount and with the day of receipt's trade date
	Check Posting Timeliness The percentage of checks posted to the Account Owner's Account on the day of receipt
Reporting Timeliness: Confirmations, Statements, Tax Reporting	Timeliness of Monthly, Quarterly and Year-End Account Owner Statements The percentage mailed within 7 Business Days of Contractor's approval of audited account statements
	Timeliness of Daily Confirmations The percentage of daily confirmations mailed within 5 Business Days
	Accuracy of Confirmations, Statements and Tax Reports The percentage of confirmations, statements and tax reports that are accurate
	Timeliness of Federal Tax Reporting The percentage of federal tax reports mailed on the agreed-to date
	Timeliness of State Tax Reporting The percentage of state tax reports mailed on the agreed-to date
Marketing Fulfillment Processing	Enrollment Kit Timeliness The percentage of enrollment kits mailed within 5 Business Days of receiving the request
Telephone Consulting Services	Answer Time - Within 30 seconds The percentage of customer calls answered within 30 seconds
	Abandonment Rate The percentage of customer calls abandoned (when a caller hangs up after connecting but before speaking with a representative)
Systems	System Availability on Business Days The number of times the processing system was unavailable for more than 45 minutes per month during 8:00 AM - 8:00 PM ET (M-F, not including New York Stock Exchange Holidays)
	Nightly Cycle Timeliness The percentage of nightly files processed on time

Customer Relationships	Service Concern and Compliance Timeliness The percentage of service concerns and complaints responded to within 7 Business Days of receipt	
Processing	New Account Accuracy Rate The percentage of new accounts set up accurately	
	Redemption Accuracy Rate The percentage of redemptions processed accurately	
	New Account Transaction Timeliness The percentage of new Accounts set up the day received if all documentation is included	
	Redemption Transaction Timeliness The percentage of withdrawals processed the day approved if all documentation is included	
Marketing Performance	Number of Accounts The number of savings accounts opened during the period	
Investment Performance	Institutional Mutual Fund	Benchmark
	Institutional Growth Equity Fund	The relevant benchmark in use for each Mutual Fund as disclosed in the then current Mutual Fund prospectus
	Institutional Bond Fund	
	Institutional Money Market Fund	
	The investment performance of each Mutual Fund and its respective benchmark for that same period	

b. Performance Measurement. By no later than November 15, 2004, the Contractor shall provide to the State a cumulative performance measurement report. The report shall indicate whether the minimum percentage requirements for each of the following performance criteria were met over the period from the Savings Plan Start Date through September 30, 2004.

Check Processing	Accuracy of Posting Checks 90% of checks received are accurately posted to a matching Account with the correct amount and with the day of receipt's trade date	
	Check Posting Timeliness 90% of checks are posted to the Account Owner's Account on the day of receipt	
Processing	New Account Accuracy Rate 90% of new accounts are set up accurately	
	Redemption Accuracy Rate 90% of redemptions are processed accurately	
	Redemption Transaction Timeliness 90% of withdrawals are processed on the date of receipt	

Reporting Timeliness: Confirmations, Statements	Timeliness of Quarterly Statements	
	90% are mailed within 7 Business Days of Contractor's approval of audited account statements	
Telephone Consulting Services	Timeliness of Daily Confirmations	
	90% of daily confirmations are mailed within 5 Business Days of transaction	
Investment Performance	Abandonment Rate	
	Less than 10% of customer calls are abandoned (when a caller hangs up after connecting but before speaking with a representative)	
Investment Performance	Institutional Mutual Fund	Benchmark
	Institutional Growth Equity Fund	The relevant benchmark in use for each
	Institutional Bond Fund	Mutual Fund as disclosed in the then current
	Institutional Money Market Fund	Mutual Fund prospectus
	For each fund, the cumulative performance over the period from the Savings Plan Start Date through September 30, 2004 is at least equal to 75% of the cumulative performance of each fund's respective benchmark for that same period. In the event that the cumulative return of the respective benchmark is less than 20% over such period, then each fund's cumulative performance will be within 500 basis points (5%) of its respective benchmark.	

In determining whether to exercise its right to extend the term of this Contract pursuant to Section B.2 below, the State *may* consider the above performance criteria of the Contractor and such other criteria as the State may at its sole discretion determine. The Contractor's compliance with the above performance measurements shall not be interpreted to relieve the Contractor from properly performing its obligations under this Contract."

b. By substituting instead the following:

"17. Quarterly Operational Performance Reports and Performance

Measurement.

a. *Quarterly Operational Performance Reports.* The Contractor shall provide operational performance measurement reports to the State on a quarterly basis within sixty (60) calendar days after the end of each calendar quarter after the Savings Plan Start Date. Each such report shall provide data regarding the operation of the Savings Plan with respect to the following:

QUARTERLY PERFORMANCE MEASUREMENTS

Correspondence	Financial Correspondence Timeliness The percentage of financially-related correspondence sent within 2 Business Days of receipt
	Non-Financial Correspondence Timeliness The percentage of non-financial correspondences sent within 7 Business Days of receipt
Check Processing	Accuracy of Posting Checks The percentage of checks accurately posted to a matching Account with the correct amount and with the day of receipt's trade date
	Check Posting Timeliness The percentage of checks posted to the Account Owner's Account on the day of receipt
Reporting Timeliness: Confirmations, Statements, Tax Reporting	Timeliness of Monthly, Quarterly and Year-End Account Owner Statements The percentage mailed within 7 Business Days of Contractor's approval of audited account statements
	Timeliness of Daily Confirmations The percentage of daily confirmations mailed within 5 Business Days
	Accuracy of Confirmations, Statements and Tax Reports The percentage of confirmations, statements and tax reports that are accurate
	Timeliness of Federal Tax Reporting The percentage of federal tax reports mailed on the agreed-to date
	Timeliness of State Tax Reporting The percentage of state tax reports mailed on the agreed-to date
Marketing Fulfillment Processing	Enrollment Kit Timeliness The percentage of enrollment kits mailed within 5 Business Days of receiving the request
Telephone Consulting Services	Answer Time - Within 30 seconds The percentage of customer calls answered within 30 seconds
	Abandonment Rate The percentage of customer calls abandoned (when a caller hangs up after connecting but before speaking with a representative)
Systems	System Availability on Business Days The number of times the processing system was unavailable for more than 45 minutes per month during 8:00 AM - 8:00 PM ET (M-F, not including New York Stock Exchange Holidays)
	Nightly Cycle Timeliness The percentage of nightly files processed on time
Customer Relationships	Service Concern and Compliance Timeliness The percentage of service concerns and complaints responded to within 7 Business Days of receipt

Processing	New Account Accuracy Rate The percentage of new accounts set up accurately	
	Redemption Accuracy Rate The percentage of redemptions processed accurately	
	New Account Transaction Timeliness The percentage of new Accounts set up the day received if all documentation is included	
	Redemption Transaction Timeliness The percentage of withdrawals processed the day approved if all documentation is included	
Marketing Performance	Number of Accounts The number of savings accounts opened during the period	
Investment Performance	Institutional Mutual Fund	Benchmark
	Institutional Growth Equity Fund	The relevant benchmark in use for each Mutual Fund as disclosed in the then current Mutual Fund prospectus
	Institutional International Equity Fund	
	Institutional Growth and Income Fund	
	Institutional Bond Fund	
	Institutional Money Market Fund	
	Institutional Equity Index Fund	
The investment performance of each Mutual Fund and its respective benchmark for that same period		

b. Performance Measurement. By no later than November 15, 2004, the Contractor shall provide to the State a cumulative performance measurement report. The report shall indicate whether the minimum percentage requirements for each of the following performance criteria were met over the period from the Savings Plan Start Date through September 30, 2004.

Check Processing	Accuracy of Posting Checks 90% of checks received are accurately posted to a matching Account with the correct amount and with the day of receipt's trade date	
	Check Posting Timeliness 90% of checks are posted to the Account Owner's Account on the day of receipt	
Processing	New Account Accuracy Rate 90% of new accounts are set up accurately	
	Redemption Accuracy Rate 90% of redemptions are processed accurately	
	Redemption Transaction Timeliness 90% of withdrawals are processed on the date of receipt	

Reporting Timeliness: Confirmations, Statements	Timeliness of Quarterly Statements 90% are mailed within 7 Business Days of Contractor's approval of audited account statements	
	Timeliness of Daily Confirmations 90% of daily confirmations are mailed within 5 Business Days of transaction	
Telephone Consulting Services	Abandonment Rate Less than 10% of customer calls are abandoned (when a caller hangs up after connecting but before speaking with a representative)	
Investment Performance	Institutional Mutual Fund	Benchmark
	Institutional Growth Equity Fund	The relevant benchmark in use for each Mutual Fund as disclosed in the then current Mutual Fund prospectus
	Institutional International Equity Fund	
	Institutional Growth and Income Fund	
	Institutional Bond Fund	
	Institutional Money Market Fund	
	Institutional Equity Index Fund	
For each fund, the cumulative performance over the period from the Savings Plan Start Date through September 30, 2004 is at least equal to 75% of the cumulative performance of each fund's respective benchmark for that same period. In the event that the cumulative return of the respective benchmark is less than 20% over such period, then each fund's cumulative performance will be within 500 basis points (5%) of its respective benchmark.		

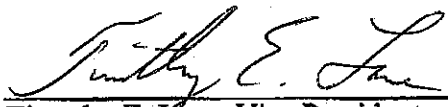
In determining whether to exercise its right to extend the term of this Contract pursuant to Section B.2 below, the State *may* consider the above performance criteria of the Contractor and such other criteria as the State may at its sole discretion determine. The Contractor's compliance with the above performance measurements shall not be interpreted to relieve the Contractor from properly performing its obligations under this Contract."

6. Annex A is amended by deleting the same in its entirety and by substituting instead the attached Annex A.

7. The other terms and provisions not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures as follows:

TIAA-CREF TUITION FINANCING, INC.

By: 
Timothy E. Lane, Vice President

Date: 3/11/2002

DEPARTMENT OF TREASURY
STATE OF TENNESSEE

By: 

Steve Adams, Treasurer & Chair
of the Board of Trustees

Date: 3/14/02

APPROVED:
DEPARTMENT OF FINANCE AND ADMINISTRATION
STATE OF TENNESSEE

By: 

C. Warren Neel, PhD, Commissioner *for*

Date: 3-21-02

APPROVED
COMPTROLLER OF THE TREASURY
STATE OF TENNESSEE

By: 

John G. Morgan, Comptroller

Date: 3/25/02

ANNEX A

AGE BANDS AND ALLOCATION GUIDELINES FOR THE AGE-BASED ASSET ALLOCATION OPTION¹

Asset Allocation Percentages²

Age Bands	Year of Birth of Beneficiary ³	Investment Horizon	Institutional Growth Equity Fund (Base Percentage of Age Band Assets)	Institutional Growth and Income Fund (Base Percentage of Age Band Assets)	Institutional Equity Index Fund (Base Percentage of Age Band Assets)	Institutional International Equity Fund (Base Percentage of Age Band Assets)	Institutional Bond Fund (Base Percentage of Age Band Assets)	Institutional Money Market Fund (Base Percentage of Age Band Assets)
1	2002 or 2003	20 – 21 years	12.0%	21.0%	27.0%	15.0%	25.0%	0.0%
2	2000 or 2001	18 – 19 years	11.2%	19.6%	25.2%	14.0%	30.0%	0.0%
3	1998 or 1999	16 – 17 years	9.6%	16.8%	21.6%	12.0%	40.0%	0.0%
4	1996 or 1997	14 – 15 years	8.0%	14.0%	18.0%	10.0%	50.0%	0.0%
5	1994 or 1995	12 – 13 years	7.2%	12.6%	16.2%	9.0%	55.0%	0.0%
6	1992 or 1993	10 – 11 years	6.4%	11.2%	14.4%	8.0%	60.0%	0.0%
7	1990 or 1991	8 – 9 years	4.8%	8.4%	10.8%	6.0%	70.0%	0.0%
8	1988 or 1989	6 – 7 years	4.0%	7.0%	9.0%	5.0%	65.0%	10.00%
9	1986 or 1987	4 – 5 years	3.2%	5.6%	7.2%	4.0%	45.0%	35.0%
10	1984 or 1985	2 – 3 years	1.6%	2.8%	3.6%	2.0%	40.0%	50.0%
11	Prior to 1984		1.6%	2.8%	3.6%	2.0%	40.0%	50.0%

ALLOCATION GUIDELINES FOR THE 100% EQUITY OPTION

Institutional Growth and Income Fund (Base Percentage of Assets)⁴	Institutional International Equity Fund (Base Percentage of Assets)⁴
80%	20%

¹ The State will annually review the Allocation Guidelines and make changes as needed.

² Under the Allocation Guidelines, the percentage of assets of an Age Band allocated to the Mutual Funds are to be in a range from 3% below to 3% above the base percentage of each Age Band; provided, however, that if there occurs a significant movement in the market (either up or down) that results in the percentage of assets of a Mutual Fund allocated to an Age Band being outside of the applicable Allocation Guideline range, the Contractor will have a commercially reasonable period of time to bring the percentage of assets of such Mutual Fund allocated to such Age Band back within the applicable range, including without limitation, by divestitures or acquisitions of securities, taking into consideration relevant market factors and the benefits to Account Owners of minimizing transaction costs.

³ Every two years a new band will be added to capture current dates of birth with all bands moving down one level.

⁴ The actual percentages are to be in a range within 3% of the base percentages indicated.

AMENDMENT NUMBER 1
TO CONTRACT FA-00-13872-00
BETWEEN THE
STATE OF TENNESSEE, BACCALAUREATE EDUCATION SYSTEM TRUST
AND
TIAA-CREF TUITION FINANCING, INC.

WHEREAS, the State of Tennessee, Baccalaureate Education System Trust, and TIAA-CREF Tuition Financing, Inc. entered into Contract No. FA-00-13872-00 on December 2, 1999 for the provision of implementation and management services to the State of Tennessee in connection with its Educational Savings Plan, and

WHEREAS, the said parties desire to amend said Contract in the manner described below,

NOW THEREFORE, the parties hereby amend said Contract as follows:

1. Section C. is amended as follows:

a. By deleting therefrom the following:

"1. Compensation. The Contractor shall be entitled to an aggregate fee at the annual rate of 0.90% of the average daily net assets of the Plan Fund, subject to adjustments as provided in Section C.2 below (the "Management Fee"), which shall be the Contractor's sole compensation for performing all the services hereunder. The Management Fee shall be reduced (dollar for dollar) by the investment management fee payable by Savings Account owners under each Mutual Fund. The investment management fee for each Mutual Fund shall be disclosed in the prospectus for each Mutual Fund. The Management Fee shall accrue and be calculated by the Contractor daily and shall be payable monthly. The Contractor shall pay all of its direct and indirect costs and expenses in connection with this Contract, the Savings Plan and the services provided hereunder, and none of such costs or expenses shall be paid from or reimbursed out of assets of the Savings Plan (other than the Management Fee). In no event, however, shall the Management Fee exceed an annual rate of 0.91% of the average daily net assets of the Plan Fund."

b. By substituting instead the following:

"1. Compensation. The Contractor shall be entitled to an aggregate fee at the annual rate of 0.95% of the average daily net assets of the Plan Fund, subject to adjustments as provided in Section C.2 below (the "Management Fee"), which shall be the Contractor's sole compensation for performing all the services

hereunder. The Management Fee shall be reduced (dollar for dollar) by the investment management fee payable by Savings Account owners under each Mutual Fund. The investment management fee for each Mutual Fund shall be disclosed in the prospectus for each Mutual Fund. The Management Fee shall accrue and be calculated by the Contractor daily and shall be payable monthly. The Contractor shall pay all of its direct and indirect costs and expenses in connection with this Contract, the Savings Plan and the services provided hereunder, and none of such costs or expenses shall be paid from or reimbursed out of assets of the Savings Plan (other than the Management Fee). In no event, however, shall the Management Fee exceed an annual rate of 0.96% of the average daily net assets of the Plan Fund."

2. Section C. is further amended by adding the following as a new Subsection C.3 and by redesignating the subsequent subsections accordingly:

"3. *Expense Reimbursement.* For so long as this Contract is in effect, on each July 1, October 1, January 1 and April 1, beginning on July 1, 2000, the Contractor shall pay to the Administrative Fund, as described in Section A.8.c. above, an amount equal to fifteen thousand dollars (\$15,000). Such amount shall be paid to the Administrative Fund by no later than five (5) business days of the date on which the payment is due and shall be deposited in the Money Market Fund established pursuant to Section A.8.c. above. Amounts paid into the Administrative Fund pursuant to this Section C.3 may be withdrawn from time to time by the State for the reimbursement of direct and indirect costs and expenses of the State relating to the Savings Plan."

3. The other terms and provisions not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures as follows:

TIAA-CREF TUITION FINANCING, INC.

MSK By: Timothy E. Lane
Timothy E. Lane, Vice President

Date: 3/28/2000

DEPARTMENT OF TREASURY
STATE OF TENNESSEE

By: Steve Adams
Steve Adams, Treasurer & Chair
of the Board of Trustees

Date: 4/27/00

APPROVED:
DEPARTMENT OF FINANCE AND ADMINISTRATION
STATE OF TENNESSEE

By: Michael C. Ferguson
John D. Ferguson, Commissioner

Date: 5-5-00

APPROVED
COMPTROLLER OF THE TREASURY
STATE OF TENNESSEE

By: John G. Morgan
John G. Morgan, Comptroller

Date: 5/8/00

CONTRACT
BETWEEN THE
STATE OF TENNESSEE, BACCALAUREATE EDUCATION SYSTEM TRUST
AND
TIAA-CREF TUITION FINANCING, INC.

THIS CONTRACT, by and between the State of Tennessee, Baccalaureate Education System Trust, hereinafter referred to as the "State", and TIAA-CREF Tuition Financing, Inc., hereinafter referred to as the "Contractor", is for the provision of implementation and management services to the State in connection with its Educational Savings Plan, as further defined in the "SCOPE OF SERVICES", below. The Contractor is a for-profit corporation having its principal place of business at 730 Third Avenue, New York, NY 10017. The Contractor's place of incorporation is the State of Delaware.

WITNESSETH

WHEREAS, the Tennessee Baccalaureate Education System Trust Program, hereinafter referred to as the "BEST Program", was established by the General Assembly of the State of Tennessee by Public Acts of 1996, Chapter 991 for the purpose of making higher education more affordable for the citizens of Tennessee by offering an educational services/pre-paid plan. Said public chapter, as has been and as may hereinafter be amended, is codified in Tennessee Code Annotated, Title 49, Chapter 7, Part 8 and shall hereinafter be referred to as the "Act"; and

WHEREAS, the Act was amended by the General Assembly of the State of Tennessee by Public Acts of 1999, Chapter 233 for the purpose of offering an Educational Savings Plan component to the BEST Program (the "Savings Plan"); and

WHEREAS, the Act gives the State the power and authority to establish and operate the Savings Plan, to enter into contracts with Purchasers (the "Savings Contracts"), and to serve as the trustees of the trust fund established to receive contributions to the Savings Plan (the "Trust Fund"); and

WHEREAS, the State has the power to enter into contracts with service providers for the provision of all or any part of the services necessary for the management and operation of the Savings Plan; and

WHEREAS, the State has determined that it is in the best interest of the BEST Program to contract out the implementation and management of the Savings Plan and the investment of the assets of the Trust Fund to an outside service provider; and

WHEREAS, the Contractor is an outside service provider and is desirous of providing the requisite services necessary for the implementation, management and operation of the Savings Plan and the investment of the Trust Fund assets in accordance with this Contract, the Act, the

rules promulgated thereunder with respect to the Savings Plan (the "Rules") and other applicable state and federal laws and regulations.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

A. SCOPE OF SERVICES:

1. Incorporation of Additional Documents.

a. Documents Incorporated. The following documents are hereby incorporated into this Contract as though fully set forth herein:

(1) The State of Tennessee, Treasury Department Request for Implementation and Management of a College Savings Plan Component for BEST, RFS Number: 309.01-017 (the "RFP"); and

(2) The Contractor's proposal dated, May 25, 1999, made in response to the RFP (the "Contractor's Proposal").

b. Order of Document Precedence. In the event of any conflict, ambiguity or discrepancy between this Contract and any of the foregoing, the conflict shall be resolved first in favor of this Contract and then in the order of precedence detailed above.

2. Defined Terms. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Act and in the Rules.

3. Appointment. The State hereby appoints the Contractor to perform investment management, marketing, general administrative and related services for the Savings Plan in accordance with the terms and conditions of this Contract. The Contractor hereby accepts the appointment and agrees to perform the services specified in this Contract.

4. Commencement of Services. The Contractor, at its sole cost and expense, shall commence the planning and implementation of services under this Contract immediately upon the effective date of this Contract. The Savings Plan shall commence opening Savings Accounts and receiving contributions from Purchasers by no later than March 1, 2000 or the date upon which all of the conditions listed in Section A.7 of this Contract have been fulfilled or waived in writing by the parties hereto (the "Savings Plan Start Date").

5. Status of Contractor and Relationship to the State. The Contractor acknowledges that it has a fiduciary relationship to the State, the Savings Plan and to the Purchasers and Beneficiaries thereof and has fiduciary duties in regard to the services which it will provide under this Contract in respect to the Trust Fund and the accounts and portfolios thereunder. The Contractor further acknowledges that it is subject to the requirement to use prudence and care in its dealing with the Savings Plan, the Trust Fund and the accounts and portfolios thereunder, in accordance with Tenn. Code Ann. § 35-3-117 and such other fiduciary requirements to which it

is subject. The Contractor accepts its appointment as such fiduciary and specifically agrees that in performing its duties hereunder that it will act not in regard to speculation, but with the care, skill, prudence and diligence under the circumstances then prevailing, specifically including, but not by way of limitation, the general economic conditions, the anticipated needs of the Savings Plan, the Trust Fund and the accounts thereunder, and the Purchasers and Beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to attain the goals of the Savings Plan as determined from the Act, the Rules and the Investment Policy established pursuant to Section A.8.b below. The Contractor agrees to discharge its duties with respect to the Savings Plan solely in the interest of the State, the Purchasers and the Beneficiaries of the Savings Plan.

6. Tax and Securities Matters.

a. *Cooperation.* The State and the Contractor shall cooperate to ensure that the conditions contained in Section A.7 hereunder are satisfied and that the duties and obligations of the parties hereunder are effectively, efficiently and promptly discharged. Each party shall execute and deliver to the other such further instruments and documents, and take such further action, as may from time to time be necessary to carry out the intent and purposes of this Contract.

b. *IRS Letter Ruling.* The Contractor shall cause to be prepared for signature and filing by the State and the Savings Plan, in a form satisfactory to the Contractor and the State, a request for a private letter ruling from the Internal Revenue Service (the "IRS") to the effect that the Savings Plan satisfies the qualification requirements of Section 529 of the Internal Revenue Code ("Section 529"), is exempt from federal taxation and addressing other agreed upon issues (the "IRS Letter Ruling").

c. *SEC No-Action Letter and Opinion of Securities Counsel.* The Contractor shall (i) assist the State in preparing for the State's signature and filing, in a form satisfactory to all parties, a request for a "no-action" letter from the Securities and Exchange Commission's staff (the "SEC No-Action Letter") and (ii) obtain an opinion from a law firm that is nationally recognized for its expertise in federal securities law matters, addressed to the State and the Contractor and dated as of the Savings Plan Start Date (the "Opinion of Securities Counsel"), each of which shall be to the effect that the Savings Plan and the operation of the Savings Plan will be exempt from registration requirements of the Securities Act of 1933, as amended, and the rules and regulations thereunder, and exempt from broker-dealer registration requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, and addressing other agreed upon issues. The Contractor's obligation to assist the State in preparing and filing the SEC No-Action Letter as required in item (i) above may be waived in writing by the parties if the Contractor has obtained assurances with respect to the legal issues referred to above, based on meetings or discussions with the staff of the SEC and/or other developments, including the

issuance of a no-action letter by such staff with respect to another state's higher education savings plan similar to the Savings Plan, which are acceptable to and satisfy the State and the Contractor.

d. State Securities and "Blue Sky" Law Clearance. Subject to (i) receipt of the documentation required in Section A.6.c above, (ii) the making of any required notification filing with the Tennessee Department of Commerce and Insurance (which notification, if required, must be filed by the Contractor prior to the Savings Plan Start Date) and (iii) verification of the availability of an applicable exemption from securities registration requirements under the securities laws of the State of Tennessee, Savings Accounts may be offered to, opened by, and contributions thereto made by, prospective or actual Purchasers in each state of the United States. At its sole cost and expense, the Contractor shall be solely responsible for identifying all required consents, approvals, notifications and other filings to this end under applicable state securities or "blue sky" laws. The State shall cooperate with the Contractor, as may be necessary, in its preparation and submission to all such consents, approvals, notifications and other filings.

e. Further Cooperation. In the event that the Savings Plan or objectives of the Savings Plan are adversely affected due to interpretations of existing federal tax law (including, without limitation, if the IRS Letter Ruling negatively impacts the Savings Plan or the IRS refuses to issue the IRS Letter Ruling), State tax law or federal or State securities laws, the State and the Contractor shall use reasonable efforts to either (i) restructure the Savings Plan within the constraints of applicable law to address such adverse consequences or (ii) if such restructuring is impractical or inadvisable, to wind-down the Savings Plan in accordance with the Act and the Rules.

f. Costs of IRS Letter Ruling and SEC No-Action Letter. The Contractor shall pay all fees and expenses of its counsel in connection with the preparation of the requests for and efforts to obtain, the SEC No-Action Letter, the IRS Letter Ruling and the Opinion of Securities Counsel.

7. Conditions to the Savings Plan Start Date. The Savings Plan Start Date shall not commence until each of the following conditions have been met or waived in writing by the parties hereto:

a. IRS Letter Ruling or Opinion. The Contractor shall have obtained (i) the IRS Letter Ruling in form and substance acceptable to the State, or (ii) if the IRS Letter Ruling is being processed by the IRS, but has not been issued as of the Savings Plan Start Date and the Contractor has no indication that the ruling will be unfavorable, an opinion of a law firm that is nationally recognized for its expertise in federal tax matters. Said opinion must be in a form and substance acceptable to the State and the Contractor and must state that the Savings Plan satisfies the qualification requirements of Section 529, is exempt from federal taxation and that the commencement of the operation of the Savings Plan prior to receiving the IRS Letter Ruling will

have no adverse consequences to the Savings Plan. The opinion shall also opine on such other issues as may be agreed upon by the parties.

b. *SEC No-Action Letter or Opinion.* The Contractor shall have obtained (i) either (A) the SEC No-Action Letter in form and substance acceptable to the State and the Contractor or (B) assurances with respect to the legal issues referred to in Section A.6.c of this Contract, based on meetings or discussions with the staff of the SEC and/or other developments, including the issuance of a no-action letter by such staff with respect to another state's higher education savings plan similar to the Savings Plan, which are acceptable to and satisfy the State and the Contractor, and (ii) the Opinion of Securities Counsel, which shall be in form and substance acceptable to the State and the Contractor and addressed to and delivered to the State and the Contractor.

c. *Representations and Warranties.* The State shall have received no information indicating that any representation or warranty made by the Contractor in this Contract is not true and correct in all material respects on the Savings Plan Start Date as though such representation or warranty was made on and as of the Savings Plan Start Date.

d. *Savings Plan Materials.* The State and the Contractor shall have approved all brochures, press materials, forms, telephone and media scripts and other materials required to commence the marketing and selling of the Savings Contracts.

8. *The Trust Fund; the Savings Plan Investment Policy and Investment Objectives; the Age Bands, the Mutual Funds, the Plan Fund and the Administrative Fund; Investment of Trust Assets; Savings Accounts; Contributions; Crediting of Contributions; Withdrawals.*

a. *The Trust Fund.*

(1) Pursuant to Public Acts of 1999, Chapter 233, the Trust Fund has been established for the receipt of moneys from Purchasers and other persons who make contributions to Educational Savings Plan accounts ("Savings Accounts") under the Savings Plan. The Trust Fund assets shall also include (i) all interest and investment income, (ii) any monetary gifts of any nature made by any individual by testamentary disposition, including, without limitation, any specific monetary gift or bequeath made by will, trust or other disposition, (iii) any penalties paid by Purchasers for non-qualified withdrawals from Savings Accounts and (iv) all other receipts of the Savings Plan from any other source, public or private.

(2) The assets of the Trust Fund shall be preserved, invested and expended solely pursuant to, and for the purposes of the Savings Plan and shall not be loaned or otherwise transferred or used for any other purposes. Subject to the prior written approval of the State, the Contractor shall not withdraw or permit to be withdrawn any assets from the Trust Fund except under the following circumstances:

(A) to make payments to, or on behalf of, Beneficiaries pursuant to the Act;

(B) to make refunds as provided in the Act; and

(C) to pay the management fees to which the Contractor is entitled under Section C.1 of this Contract.

b. The Savings Plan Investment Policy and Investment Objectives. Prior to the Savings Plan Start Date, the State shall prepare and adopt an appropriate investment policy for the Savings Plan, along with investment guidelines and procedures (collectively referred to as the "Investment Policy"). At the State's request, the Contractor shall assist the State in the preparation of such policy.

In accordance with the Act and the Rules, the parties acknowledge and understand that the investment policy and objective of the Savings Plan is to achieve investment returns over the applicable investment period (i.e., the period from the making of a contribution through the date on which a withdrawal for qualified higher education expenses is projected) that are at least equal to the rate of increase in the costs of higher education over that period. The parties acknowledge that no guarantee exists of any return of amounts contributed by Purchasers or any income or earnings thereon, and that the investment of contributions made under the Savings Plan is subject to market risks, and that the Mutual Funds and the Age Bands (both of which are described in subsection (c) below) and the Purchasers are subject to a risk of loss in any particular annual or other period (including the applicable investment horizon).

c. The Age Bands, the Mutual Funds, the Plan Fund and the Administrative Fund. The proceeds from the contributions made to Savings Accounts pursuant to Savings Contracts shall be allocated by the State to the plan fund of the Trust Fund which holds all assets of the Trust Fund excluding the assets held in the Administrative Fund (as defined below) (the "Plan Fund"), and to the applicable Age Bands, which are each a portion of the assets of the Plan Fund established for Beneficiaries born in specified years in accordance with the allocation guidelines (as described in Section A.9.a below and as shall be described in the Savings Plan disclosure booklet and the Savings Contract) (the "Age Bands"). The State shall be the sole trustee of the Trust Fund and the Contractor shall invest Trust Fund assets held in the Plan Fund exclusively in shares representing ownership interests in the following TIAA-CREF Institutional Mutual Funds: the TIAA-CREF Institutional Growth Equity Fund, the TIAA-CREF Institutional Bond Fund and the TIAA-CREF Institutional Money Market Fund (collectively, the "Mutual Funds") and such other mutual fund or mutual funds as the State and the Contractor may hereafter agree upon in writing. In addition, the State shall cause the Trust Fund to establish an account with the TIAA-CREF Institutional Money Market Fund (the "Money Market Fund") in the name of the Trust Fund, and all funds allocated to the administrative fund of the Trust Fund (the "Administrative Fund") shall be deposited in the Money Market Fund.

All non-qualified withdrawal penalties and any other penalties or fees charged to Savings Accounts or payable by Purchasers under the Savings Plan shall be deposited in the Administrative Fund. Withdrawals from the Administrative Fund may be made from time to time by the State for the reimbursement of direct and indirect costs and expenses of the State relating to the Savings Plan.

d. Investment of Trust Fund Assets. The investment objective, policies and practices for each of the Mutual Funds shall be as set forth in the Mutual Fund registration statement, as amended from time to time, but in any case subject to the Act, the Rules, Section 529 and the Investment Policy. The State agrees to obtain the prior written consent of the Contractor prior to making any modification to the Investment Policy which would cause the Mutual Fund registration statement for any of the Mutual Funds to violate the Investment Policy. The Trust Fund assets held in the Plan Fund shall be invested and administered by the Contractor as set forth in the registration statement for the Mutual Funds and as shall be set forth in the Savings Plan disclosure booklet. The Contractor shall annually provide to the State, within sixty (60) calendar days after the end of each calendar year, a certification that the investments of the Trust Fund are, and at all times during the year have been, in compliance with the Investment Policy.

e. Savings Accounts. The Contractor shall establish for each Beneficiary of a Savings Plan Contract an individual Savings Account in the Trust Fund for the receipt of contributions made on behalf of the Beneficiary. Such contributions shall be credited to the appropriate Beneficiary's Savings Account in accordance with Paragraph g below.

f. Contributions. The Contractor shall direct the investment of contributions made to the Plan Fund in accordance with the allocation guidelines for the applicable Age Band (as set forth in Annex A).

g. Crediting of Contributions. Contributions to the Savings Plan received before the close of trading on the New York Stock Exchange ("NYSE") (usually 4:00 p.m., Eastern Time) on any day on which the NYSE is open for trading (a "Business Day") shall be credited to the Savings Account to which the contribution is made on the same day. Contributions received at or after the close of trading on the NYSE or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be credited that same day to the applicable Age Band at the Net Asset Value per share (as defined in Paragraph h below) calculated for that day for such Age Band in accordance with Paragraph h below. A contribution shall be credited to a Savings Account (i) once the documentation with respect to the Savings Account is properly completed and such contribution is in good order and (ii) at a share price equal to the Net Asset Value per share (as defined below) next calculated for the applicable Age Band after the contribution is credited.

h. Net Asset Value Per Share. "Net Asset Value per share" or "NAV per share" shall mean the price per share in any Age Band or Mutual Fund, respectively. Net Asset Value per share shall be determined when regular trading closes on the New York Stock Exchange on each Business Day that the NYSE is open. Net Asset Value per share shall be computed by dividing the value of an Age Band's or a Mutual Fund's, as the case may be, net assets less its liabilities, by the number of outstanding shares of such Age Band or Mutual Fund. The Net Asset Value per share of each Age Band shall be based upon the Net Asset Value per share of each of the Mutual Funds in which it invests.

i. Withdrawals. The Contractor shall process requests for withdrawals and refunds from the Savings Accounts in compliance with the Act, the Rules, Section 529 and the regulations promulgated by the Internal Revenue Service, as amended from time to time. The Net Asset Value per share for an Age Band applicable to a withdrawal or refund shall be the Net Asset Value per share next calculated for such Age Band once such withdrawal or refund request is received in good order.

j. Commencement of Receipt of Contributions. The Contractor shall be prepared to establish Savings Accounts on behalf of individual Beneficiaries and to commence receiving contributions to such Accounts immediately on the Savings Plan Start Date.

9. Allocation Guidelines; Mid-Year Changes in Allocation Guidelines.

a. Allocation Guidelines. The Contractor shall invest the assets of the Trust Fund held in the Plan Fund allocated to each Age Band (including new contributions allocated to each Age Band and the net earnings of each Age Band) in accordance with the percentage ranges determined in accordance with this Section and as set forth in Annex A (the "Allocation Guidelines"). Unless changed by the State in accordance with Paragraph b below, the Allocation Guidelines for each Age Band for calendar year 2000 shall be as set forth in Annex A. All Allocation Guidelines shall be in the format set forth in Annex A. On or before November 1 of each calendar year during the term of this Contract commencing with November 1, 2001, the Contractor shall submit to the State, for the State's consideration, the Contractor's recommended Allocation Guidelines for each Age Band for the following calendar year. The Contractor shall make such recommendations consistent with the objective of the Savings Plan set forth in the Savings Plan disclosure booklet and the risk levels deemed appropriate by the State. At the request of the State, the Contractor shall consult with the State and may thereafter propose revised Allocation Guidelines for the following calendar year. On or before December 1 of each such calendar year, the State shall either notify the Contractor that the State approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the State, for the next calendar year or shall deliver to the Contractor revised Allocation Guidelines for such year that the State deems appropriate.

b. Mid-Year Changes in Allocation Guidelines. Notwithstanding anything to the contrary set forth above, the State, upon thirty (30) days' written notice to the Contractor, may change the Allocation Guidelines at any time for application during the remaining portion of the calendar year. In the event of any such change by the State, the Contractor shall have a commercially reasonable period of time to implement such change in the Allocation Guidelines, including, without limitation, divestitures and acquisitions of securities, taking into consideration relevant market factors and the benefits to Purchasers of minimizing transaction costs.

10. Marketing and Promotion; Communications; Contractor and Affiliate Marketing and Advertising.

a. Marketing and Promotion Campaign. The Contractor shall coordinate marketing and information materials with the State and create a multi-year marketing plan. In addition, the Contractor shall perform the marketing and promotion functions for the Savings Plan. Such functions shall be initiated by no later than the Savings Plan Start Date and shall include, but shall not be limited to, the following:

- (1) Write, produce and schedule promotions in the print and electronic media;
- (2) Develop a marketing approach that promotes saving for higher education;
- (3) Design, draft, print, update and distribute a Savings Plan disclosure booklet and other marketing and advertising materials from time to time through the termination date of this Contract;
- (4) Design and maintain a Web-site for the Savings Plan;
- (5) Conduct community forums and other similar events, including press events, with the State and other public officials and personalities;
- (6) Develop a marketing plan to promote participation by corporations and local governments by offering payroll deduction services to employees;
- (7) Develop programs to enable institutions of higher education to participate in marketing and promotion of the Savings Plan;
- (8) Develop and implement a marketing plan to promote minority and low-income participation in the Savings Plan; and
- (9) Evaluate the effectiveness of the marketing and advertising campaigns systematically and at least annually and provide written reports to the State of its findings.

b. Marketing Expenditures and Promotional Activities. For the period from the date hereof through the first anniversary of the Savings Plan Start Date, the Contractor shall expend \$1,500,000.00 for marketing and promotional activities for the Savings Plan. During each one-year period ending on the second and third anniversaries of the Savings Plan Start Date during the term of this Contract, the Contractor shall expend an additional \$750,000.00 for marketing and promotional activities for the Savings Plan. For each one year period thereafter during the

term of this Contract, the Contractor shall expend an additional \$375,000.00 for marketing and promotional activities for the Savings Plan.

Beginning in the calendar year 2000, by not later than each November 15, the Contractor shall submit to the State, in writing, a proposed marketing plan for the immediately following calendar year. Prior to implementation, each marketing plan must be satisfactory to the State. The Contractor shall implement the marketing plan, as approved in writing by the State, and any material changes to such plan shall require the prior written consent of the State.

c. Communications. The Contractor shall be identified as the plan manager for the Savings Plan, and the "TIAA-CREF" brand name and logo, together with the Plan logo designed specifically for the Savings Plan (the "Plan Logo"), shall be displayed, on (i) each application to open a Savings Account and each Savings Contract; (ii) each Savings Plan disclosure booklet and any disclosure supplemental thereto; (iii) each Savings Account statement; (iv) each pamphlet and other materials advertising the Savings Plan; (v) each advertising of the Savings Plan in print and electronic media; and (vi) other Savings Plan documents, including other Savings Plan forms and letterhead.

d. Contractor and Affiliate Marketing and Advertising. If a Purchaser indicates on a Savings Contract that such Purchaser wishes to receive additional solicitations from the Contractor, then the Contractor and its affiliates may, but only under separate cover from any communication to Purchasers relating to the Savings Plan or a Savings Account, make directed non-Savings Plan mailings to such Purchaser of (i) brochures, pamphlets and other advertising or marketing information concerning the Contractor or its subsidiaries and affiliates or the products or services thereof and (ii) with the prior written consent of the State, which consent shall not be unreasonably withheld, other mailings; provided that without the prior written consent of the State no mention in any non-Savings Plan mailing shall be made of the State or the Savings Plan, including any aspect thereof. The Contractor shall not, and shall cause its affiliates not to, (i) sell any list established in administering the Savings Plan of Purchasers or Beneficiaries or any name thereon to any third party, (ii) use any list of Purchasers or any name therein for a solicitation for any other tuition funding programs, (iii) solicit any Beneficiaries or (iv) solicit any Purchasers who have not requested in their Savings Contract that they receive solicitations from the Contractor or its affiliates. The internet web site for the Savings Plan shall contain the address of the web site of TIAA-CREF, which currently has the URL address "<http://www.tiaa-cref.org>" and contain a link to the State's web site, which currently has the URL address "<http://www.treasury.state.tn.us/best.htm>". The State shall notify the Contractor in advance of all marketing and promotional activities of the State with respect to the Savings Plan; provided, however, that no such notice shall be required concerning general outreach activities, workshops,

presentations and publications that include a summary of all programs administered by the State, including a summary description of the Savings Plan.

e. No Guaranty on the Investment Return. In its marketing materials, the Contractor shall always highlight the fact that neither the State nor the Contractor can guarantee any rate of return on amounts invested by Purchasers or any income thereon. The Contractor shall also highlight the above fact in all sales related phone or in-person contacts with current or potential Purchasers or Beneficiaries when discussing the returns from an investment in the Savings Plan.

11. Administrative Services.

a. General Administration. The Contractor shall perform the general administrative functions for the Savings Plan. Such functions shall include, but shall not be limited to, the following:

(1) Design, draft, print and process the application materials and the Savings Contract for the Savings Plan and all forms and other materials that will be used in the Savings Plan, including forms containing the information necessary to process qualified withdrawal requests and non-qualified withdrawal requests;

(2) Design or acquire all necessary software and hardware for the operation of the Savings Plan;

(3) Provide Purchasers with information to assist them in deciding the appropriateness and level of their participation and the various strategies that may be appropriate for them to pay for post-secondary education expenses, including the Savings Plan and other plans of the BEST Program;

(4) Maintain account data for each Beneficiary in such a manner that the amount of the year-to-date accumulated contributions and the current value of the account can be made available by phone (or by computer when available) immediately to each Beneficiary and each Purchaser or other participant upon request during regular business hours for the State of Tennessee; such account information to be current through the last business day preceding the day of the inquiry;

(5) Provide each Purchaser with information explaining minimum and maximum investment levels;

(6) Assist the State in establishing adequate safeguards to prevent the deposit of excess contributions to Savings Accounts;

(7) Determine if Purchasers or other contributors have made excess contributions on behalf of a Beneficiary and promptly refund to the contributors such excess payments;

(8) Review application forms and Savings Contracts, open Savings Accounts, process contributions to Savings Accounts and manage the Trust Fund assets;

(9) Establish a toll-free telephone number or numbers, as appropriate, and provide telephone consultants (Series 6 Registered Representatives and other appropriate representatives) to provide sales/counseling support as well as related services;

(10) Establish and maintain all Savings Accounts and other accounts of the Trust Fund and ensure compliance with the Act, the Rules, Section 529 and the regulations promulgated thereunder, and any other applicable laws and regulations;

(11) Calculate the amount of any refunds to, or penalties imposed on any Beneficiaries, Purchasers or other participants under applicable State or federal statutes or regulations and otherwise perform treasury services with respect to cash flows from contributions to and withdrawals from Savings Accounts;

(12) Solicit employers in order to establish and maintain payroll deduction plans and automatic withdrawal procedures for contributions to Savings Accounts;

(13) Prepare and deliver to Purchasers quarterly and annual statements identifying the contributions made to the relevant Savings Account during the applicable period, the total contributions made to such Savings Account, the value of such Savings Account, distributions made and any additional information;

(14) By March 31st of each year, prepare and deliver to each Beneficiary turning age 17 in such year statements indicating the prior year end account value for each Savings Account of the Beneficiary. The statements shall be provided to the Beneficiary in a single mailing;

(15) In accordance with the conditions of the Savings Plan, disburse funds for qualified withdrawals, transfers, refunds and cancellation of Savings Contracts;

(16) Prepare, print and mail reports to the State regarding the Savings Plan, including, among other things, information on the number of Purchasers and Beneficiaries, geographical and demographic distribution of Purchasers and Beneficiaries, total yearly contributions by all Purchasers, methods used by Purchasers to make contributions and the management fee collected;

(17) Ensure that representatives of the Contractor, including the management of Contractor, are available to discuss Savings Plan issues with the State and its staff promptly upon request; and

(18) Make its management team working on the Savings Plan available to meet with and receive input from the State throughout the term of this Contract and during public meetings of the Board of Trustees of the BEST Program.

b. Customer Services. The Contractor shall provide all customer services for the Savings Plan, which services shall emphasize courteous, prompt and responsive treatment of Beneficiaries and Purchasers, and shall include the following:

(1) Establish a toll-free telephone number or numbers, as appropriate, and telephone operators to answer questions and provide related services to Beneficiaries and Purchasers, such service to be provided at a minimum, during the hours of 7:00 a.m. to 10:00 p.m., Central Time.

(2) Provide a means for Beneficiaries and Purchasers to express concerns or comments regarding the Savings Plan and report these concerns and comments to the State in a timely manner;

(3) Establish a complaint resolution process which provides for prompt, efficient and customer-friendly disposition of complaints;

(4) Upon written request from a Purchaser, or his or her legal representative, provide account information for each account to which the Purchaser has made one or more contributions, including the amount of contributions and earnings thereon, at no cost to the Purchaser; and

(5) Upon written request from a Beneficiary, or his or her legal representative, provide the Beneficiary with account information, including the amount of contributions and earnings thereon under all Savings Contracts that designate him or her as a Beneficiary, at no cost to the Beneficiary.

c. Legal, Regulatory, Tax, Securities and Miscellaneous. In addition to the Contractor's other obligations under this Contract, at its sole cost and expense, the Contractor shall perform the following legal, regulatory, tax, securities and miscellaneous tasks:

(1) Prepare and submit to Purchasers and Beneficiaries all tax forms, including 1099 Forms of the IRS, or submit the underlying information to the State for submission by the State to Purchasers or Beneficiaries, in a format that is requested by the State;

(2) Prepare and provide any and all information returns, filings, reports or other materials required by the IRS or any other federal or state agency regardless of whether they are expressly required by the statutes and/or regulations specifically relating to the Savings Plan;

(3) Account separately for any moneys received from an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or any state or local government which establishes a Savings Account for scholarship purposes;

(4) Keep and protect the confidentiality of personal information concerning Purchasers and Beneficiaries, including identification numbers or codes and account access numbers or codes, in accordance with all applicable federal and Tennessee laws;

(5) Make available to the State the results of any periodic examination of the Contractor by any state insurance commission (except to the extent such report may not be disclosed under applicable law or regulations);

(6) Prepare and file all statements, schedules, reports and other information that are required by state or federal law or regulations, including federal and state tax law and securities

law, that relate to the Savings Plan, the Trust Fund, the Savings Accounts and any other entity, account or program related to the Savings Plan;

(7) Control for fraud in a manner consistent with rules and regulations adopted by the federal Internal Revenue Service or the Tennessee Comptroller of the Treasury under any direct reimbursement method of payment which may be adopted, and provide summary reports to the State on a timely basis concerning all incidents of fraud or suspicions of fraud and the extent thereof;

(8) Perform asset allocation studies and make recommendations to the State; and

(9) Upon reasonable request, provide the State with all regulatory filings and reports regarding the Savings Plan made by or on behalf of the Contractor.

d. Service Enhancements. The Contractor shall provide to the State, without additional charge, any updates and enhancements to the services hereunder which it provides in the normal course of business to all its customers in the performance of similar investment management, marketing, general administrative and related services. Such services may include by way of illustration, but not by way of limitation, on-line reporting services.

12. Personnel. The Contractor shall maintain sufficient, qualified personnel to establish Savings Plan Accounts under the Plan and to process Savings Plan Contracts and any amendments thereto; to answer inquiries of Purchasers, Beneficiaries and the State as to account balances and other records maintained or generated by the Contractor; and to otherwise fulfill its duties and responsibilities under this Contract. The State reserves the right to disapprove the use of any individual representatives of the Contractor who are performing marketing or customer service type functions under this Contract; however, no such disapproval shall be based on the grounds specified in Section D.7 hereof.

13. State Oversight. The Contractor shall consult with the State in all aspects of the management of the Savings Plan, and shall consult with and obtain the prior approval of all aspects of the process of developing and refining the marketing and promotion campaigns and materials. Communication materials and forms regarding the Savings Plan shall be designed, produced and distributed at the Contractor's expense and shall be filed with and approved in advance by the State. No marketing or promotion activity may commence without the prior written authorization from the State.

14. Meetings. The Contractor and the State shall meet as frequently as either of them deems advisable and at least monthly during the first six (6) calendar months of the term of this Contract, and thereafter at least once during each calendar quarter. Any of such meetings may be held in person or by telephone. Representatives of the Contractor shall appear at meetings of the Board of Trustees of the BEST Program or its committees, as requested by the State, to explain

any of the operations of the Savings Plan, including its investment and marketing strategies and any successes or failures of the Savings Plan.

15. Ownership and Custody of Plan Materials.

a. *In General.* The State shall own and have all right, title and interest in and to, and beneficial ownership of, the Plan Records (as defined in Paragraph b below), which shall be readily accessible to the State, at the Contractor's expense, in a commercially reasonable manner. In performing the services under this Contract, and in the event of any action, suit, investigation or similar proceeding involving the Contractor that is brought in connection with the Savings Plan, the Contractor shall have full access to the relevant Plan Records and to the fullest extent permitted by law, the State shall cooperate fully, and shall cause its officials, officers, employees and agents to cooperate fully, with the Contractor in connection with any such action, suit, investigation or similar proceeding.

Other than the Plan Records, the Contractor shall be and remain the sole owner of all records, books, documents, correspondence, analyses, designs, drawings, papers and files, the intellectual property rights relating to the structure and operation of the Savings Plan (such as investment allocation methodologies and know-how, any software and analytical tools, including but not limited to the "Savings Calculator", as are otherwise owned by the Contractor and its affiliates and utilized or developed by or for the Contractor for the marketing or administration of the Savings Plan) and research, reports, publications, training materials and manuals developed solely by or for the Contractor relating to savings for higher education and plans relating thereto that are not specific to the Savings Plan; *provided, however*, that the State shall not be restricted in any manner in connection with the continuation of the Savings Plan after the expiration of this Contract in using the same or substantially the same Savings Plan structure or portions thereof (including the investment and Allocation Guidelines components) as have been in effect prior to the final termination date of this Contract, and the Contractor shall be deemed to have granted the State a non-exclusive, perpetual, royalty-free, non-transferable license in the United States to so use any or all of the foregoing.

b. *Plan Records Defined.* "Plan Records" shall mean collectively, (i) all records, books, correspondence, papers and files relating solely or primarily to the Savings Plan, whether or not in the possession of the State, including, without limitation, all lists, compilations and summaries of Purchasers, Beneficiaries or prospective Purchasers who contact the Contractor for the purpose of expressing an interest in the Savings Plan (the "Trust Materials") and (ii) the Plan Logo, any slogan developed specifically for the Savings Plan, and any trade names, trade marks or service marks created specifically for the Savings Plan, and any copyrighted materials relating solely or primarily to the Savings Plan, including materials contained in the Savings Plan disclosure booklet that are related specifically to the State, the Trust Fund or the Savings Plan,

web site content related specifically to the Savings Plan (other than web site elements contained in TIAA-CREF's web site) and marketing, advertising and public relations materials that are specific to the Savings Plan (the "Media Materials").

c. Derivative Materials. The State hereby grants to the Contractor an exclusive, perpetual, royalty-free, worldwide, transferable license (i) to create, use and distribute marketing, advertising, web site or other media-related materials based on or derived from the Media Materials and (ii) to use (including the right to modify or create derivatives of) the format (but not the content) of the Plan Records in any manner and for any purpose, including without limitation, creating or otherwise developing materials based thereon (the items set forth in clauses (i) and (ii) above constituting the "Derivative Materials"), so long as such Derivative Materials are used by the Contractor (or any transferee with respect to such license) in a manner in which the public will not confuse such Derivative Materials as being related to the Savings Plan. Prior to the initial public use of any specific item of Media Material, the Contractor shall submit such item of Media Material to the State for its approval, provided that if the State fails to comment on such item within ten (10) Business Days after submission, the State shall be deemed to have granted its approval. The State acknowledges that the Contractor will own and have all right, title and interest in and to, and beneficial ownership of, all Derivative Materials and any intellectual property rights related thereto.

16. Reports and Financial Statements; Account Statements; Compliance Requirements; Tax Reports; Audits.

a. Reports and Financial Statements. The Contractor shall prepare and deliver to the State (i) within twenty (20) Business Days immediately following the end of each calendar quarter, reports on the performance of each of the Mutual Funds and the Administrative Fund, in a form mutually satisfactory to the State and the Contractor, and (ii) within forty (40) days immediately following the end of each fiscal year of the Savings Plan (said fiscal year being from January 1 through December 31), an annual statement of assets and liabilities and changes in net assets in a form mutually satisfactory to the State and the Contractor, each such report to be prepared in accordance with generally accepted accounting principles applied on a consistent basis as of and for the periods involved.

b. Account Statements. The Contractor shall prepare and deliver to each Purchaser within thirty (30) days immediately following the end of the period to which they pertain, calendar quarter and calendar year statements (i) identifying the contributions made to the relevant Savings Account during the preceding period, (ii) the total contributions made to such Savings Account through the end of such period, (iii) the value of such Savings Account at the end of such period, (iv) distributions made during such period and (v) such other information that the Contractor and the State agree to have reported to the Purchaser.

c. Compliance Requirements. The Contractor shall:

(i) Use its best efforts to keep the Savings Plan in compliance with requirements of the Act and the Rules and to manage the Savings Plan to qualify as a "qualified State tuition plan" under Section 529;

(ii) Keep adequate records of each Savings Account and keep each Savings Account separate from each other Savings Account;

(iii) Compile information for statements required to be prepared under the Act and the Rules and provide such compilations to the State; and

(iv) Provide the State with copies of all regulatory filings and reports made by the Contractor in connection with the Savings Plan until the final termination date of this Contract.

d. Tax Reports. The Contractor shall:

(i) If there is any distribution from a Savings Account to any individual or for the benefit of any individual during a calendar year, report such distribution to the Internal Revenue Service and either the Purchaser, the Beneficiary or the distributee to the extent required by federal law or regulation; and

(ii) Prepare and file statements and information relating to Savings Accounts to the extent required by federal and State tax law.

e. Audits. The Contractor shall prepare, at its expense, annual financial statements for the Savings Plan within seventy-five (75) days following the end of each fiscal year of the Savings Plan. The Contractor shall, promptly upon request, provide the State access to all files, records, documents, and data pertaining to the Savings Plan which are in its possession or control. The Contractor shall also obtain an audit at least annually by a firm of certified public accountants and provide the results to the State.

17. Quarterly Operational Performance Reports and Performance Measurement.

a. Quarterly Operational Performance Reports. The Contractor shall provide operational performance measurement reports to the State on a quarterly basis within sixty (60) calendar days after the end of each calendar quarter after the Savings Plan Start Date. Each such report shall provide data regarding the operation of the Savings Plan with respect to the following:

QUARTERLY PERFORMANCE MEASUREMENTS	
Correspondence	Financial Correspondence Timeliness
	The percentage of financially-related correspondence sent within 2 Business Days of receipt
	Non-Financial Correspondence Timeliness
	The percentage of non-financial correspondences sent within 7 Business Days of receipt

Check Processing	Accuracy of Posting Checks The percentage of checks accurately posted to a matching Account with the correct amount and with the day of receipt's trade date
	Check Posting Timeliness The percentage of checks posted to the Account Owner's Account on the day of receipt
Reporting Timeliness: Confirmations, Statements, Tax Reporting	Timeliness of Monthly, Quarterly and Year-End Account Owner Statements The percentage mailed within 7 Business Days of Contractor's approval of audited account statements
	Timeliness of Daily Confirmations The percentage of daily confirmations mailed within 5 Business Days
	Accuracy of Confirmations, Statements and Tax Reports The percentage of confirmations, statements and tax reports that are accurate
	Timeliness of Federal Tax Reporting The percentage of federal tax reports mailed on the agreed-to date
	Timeliness of State Tax Reporting The percentage of state tax reports mailed on the agreed-to date
Marketing Fulfillment Processing	Enrollment Kit Timeliness The percentage of enrollment kits mailed within 5 Business Days of receiving the request
Telephone Consulting Services	Answer Time – Within 30 seconds The percentage of customer calls answered within 30 seconds
	Abandonment Rate The percentage of customer calls abandoned (when a caller hangs up after connecting but before speaking with a representative)
Systems	System Availability on Business Days The number of times the processing system was unavailable for more than 45 minutes per month during 8:00 AM - 8:00 PM ET (M-F, not including New York Stock Exchange Holidays)
	Nightly Cycle Timeliness The percentage of nightly files processed on time
Customer Relationships	Service Concern and Compliance Timeliness The percentage of service concerns and complaints responded to within 7 Business Days of receipt
Processing	New Account Accuracy Rate The percentage of new accounts set up accurately
	Redemption Accuracy Rate The percentage of redemptions processed accurately
	New Account Transaction Timeliness The percentage of new Accounts set up the day received if all documentation is included
	Redemption Transaction Timeliness The percentage of withdrawals processed the day approved if all documentation is included

Marketing Performance Number of Accounts

The number of savings accounts opened during the period

**Investment
Performance**

Institutional Mutual Fund

Benchmark

Institutional Growth Equity Fund
Institutional Bond Fund
Institutional Money Market Fund

The relevant benchmark in use for each
Mutual Fund as disclosed in the then current
Mutual Fund prospectus

The investment performance of each Mutual Fund and its respective
benchmark for that same period

b. Performance Measurement. By no later than November 15, 2004, the Contractor shall provide to the State a cumulative performance measurement report. The report shall indicate whether the minimum percentage requirements for each of the following performance criteria were met over the period from the Savings Plan Start Date through September 30, 2004.

Check Processing

Accuracy of Posting Checks

90% of checks received are accurately posted to a matching Account
with the correct amount and with the day of receipt's trade date

Check Posting Timeliness

90% of checks are posted to the Account Owner's Account on the day of
receipt

Processing

New Account Accuracy Rate

90% of new accounts are set up accurately

Redemption Accuracy Rate

90% of redemptions are processed accurately

Redemption Transaction Timeliness

90% of withdrawals are processed on the date of receipt

**Reporting Timeliness:
Confirmations,
Statements**

Timeliness of Quarterly Statements

90% are mailed within 7 Business Days of Contractor's approval of
audited account statements

Timeliness of Daily Confirmations

90% of daily confirmations are mailed within 5 Business Days of
transaction

**Telephone Consulting
Services**

Abandonment Rate

Less than 10% of customer calls are abandoned (when a caller hangs up
after connecting but before speaking with a representative)

**Investment
Performance**

Institutional Mutual Fund

Benchmark

Institutional Growth Equity Fund
Institutional Bond Fund
Institutional Money Market Fund

The relevant benchmark in use for each
Mutual Fund as disclosed in the then current
Mutual Fund prospectus

For each fund, the cumulative performance over the period from the
Savings Plan Start Date through September 30, 2004 is at least equal to
75% of the cumulative performance of each fund's respective
benchmark for that same period. In the event that the cumulative return
of the respective benchmark is less than 20% over such period, then
each fund's cumulative performance will be within 500 basis points
(5%) of its respective benchmark.

In determining whether to exercise its right to extend the term of this Contract pursuant to Section B.2 below, the State *may* consider the above performance criteria of the Contractor and such other criteria as the State may at its sole discretion determine. The Contractor's compliance with the above performance measurements shall not be interpreted to relieve the Contractor from properly performing its obligations under this Contract.

B. TERM:

1. *Initial Term.* This Contract shall be effective for the period commencing on December 2, 1999 and ending on the fifth anniversary date of the Savings Plan Start Date, as defined in Section A.4 above. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. *Term Extension.* The State reserves the right to extend this Contract for up to five (5) additional years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract.

C. PAYMENT TERMS AND CONDITIONS:

1. *Compensation.* The Contractor shall be entitled to an aggregate fee at the annual rate of 0.90% of the average daily net assets of the Plan Fund, subject to adjustments as provided in Section C.2 below (the "Management Fee"), which shall be the Contractor's sole compensation for performing all the services hereunder. The Management Fee shall be reduced (dollar for dollar) by the investment management fee payable by Savings Account owners under each Mutual Fund. The investment management fee for each Mutual Fund shall be disclosed in the prospectus for each Mutual Fund. The Management Fee shall accrue and be calculated by the Contractor daily and shall be payable monthly. The Contractor shall pay all of its direct and indirect costs and expenses in connection with this Contract, the Savings Plan and the services provided hereunder, and none of such costs or expenses shall be paid from or reimbursed out of assets of the Savings Plan (other than the Management Fee). In no event, however, shall the Management Fee exceed an annual rate of 0.91% of the average daily net assets of the Plan Fund.

2. *Adjustments to the Management Fee.* The Management Fee shall be reduced by 0.20% (or 20 basis points) in the event that a matching contribution incentive on annual contributions up to \$5,000.00 is adopted by the State of Tennessee.

3. *Maximum Liability.* The Management Fee shall constitute the contract price and the entire compensation due the Contractor for the services and all the Contractor's obligations hereunder regardless of the difficulty, hours worked, or material or equipment required. The contract price includes, but is not limited to, all applicable taxes, overheads, profits and all other direct and indirect costs incurred or to be incurred by the Contractor. The Contractor specifically acknowledges and agrees that it shall not be entitled to receive any compensation or

remuneration whatsoever from the State in connection with the Contractor's services hereunder. The compensation payable to the Contractor hereunder shall be paid from the Plan Fund as provided in Section C.1 above and the State represents to the Contractor that payment of such compensation is not subject to appropriation by the State.

4. Compensation Firm. The maximum liability under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.

5. Payment Methodology. Commencing on the fifteenth day of each month after the Savings Plan Start Date, the Contractor shall deliver to the State a summary report of its calculation of the Management Fee for the preceding month, in a format and by a means, electronically or otherwise, to be agreed upon by the Contractor and the State. Such report shall set forth, at a minimum, the net assets of the Plan Fund invested in each Mutual Fund for each day of the preceding month. If, within seven days following receipt of such calculation, the State does not advise the Contractor that it objects to such calculation, the Contractor shall withdraw the portion of the Management Fee calculated with respect to the Savings Plan assets from the Plan Fund. If the State advises the Contractor that it objects to such calculation, the State and the Contractor shall, in good faith, attempt to resolve such objection as soon as reasonably practicable. If the State objects to a portion of such calculation, the Contractor shall withdraw such portion of the Management Fee that is not in dispute. The calculation and collection of the Management Fee shall remain subject to post-audit adjustment, and neither the State's failure to advise the Contractor with respect to any monthly calculation, nor any transfer by the Contractor in payment of a prior amount calculated and submitted but not objected to by the State, shall preclude subsequent adjustment of the Management Fee or the repayment by the Contractor of any overage to the Plan Fund.

6. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

D. STANDARD TERMS AND CONDITIONS:

1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State of Tennessee officials in accordance with applicable Tennessee State laws and regulations.

2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate State of Tennessee officials in accordance with applicable Tennessee State laws and regulations.

3. Termination for Convenience. The State may terminate this Contract by giving the Contractor at least thirty (30) days written notice before the effective termination date. In that event, the Contractor shall be entitled to receive equitable compensation for satisfactory, authorized services completed as of the termination date.

4. Termination for Cause. If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, Subsections D.6 and D.7 of this Contract. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Contract.

6. Conflicts of Interest. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

12. Independent Contractor. The parties hereto, in the performance of this Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

13. State Liability. The State shall have no liability except as specifically provided in this Contract.

14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

15. State and Federal Compliance. The Contractor shall comply with all applicable

State and Federal laws and regulations in the performance of this Contract.

16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee and the courts of the United States which are located within the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

1. Conflict With Other Contract Terms. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

2. Publication. The Contractor agrees that no publication related to this Contract, as defined in Tennessee Code Annotated, Section 12-7-102, shall be printed unless a printing authorization number has been obtained and affixed as required by Tennessee Code Annotated, Section 12-7-103(d).

3. Confidentiality.

a. Strict standards of confidentiality of records will be maintained in accordance with the law. All material and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written or magnetic tape, cards or otherwise shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

b. The Contractor will be deemed to have satisfied its obligations under this Section E.3 by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of Subsection a. of this Section.

c. The Contractor's obligations under this Section E.3 do not apply to information: (i) in the public domain; (ii) entering the public domain but not from a breach by the Contractor of this Contract; (iii) previously possessed by the Contractor without written obligation to the State to protect it; (iv) acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; (v) independently developed by the Contractor without use of the State's information; (vi) disclosed by the State to others without restrictions against disclosure; or (vii) required to be disclosed by applicable law or regulation; or (viii) disclosed to an Institution of Higher Education with the consent of the Beneficiary.

d. It is expressly understood and agreed that the obligations set forth in this Section E.3 shall survive the termination of this Contract.

4. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

5. Cure of Breach. Notwithstanding Section D.4 hereof to the contrary, in the event the Contractor fails to properly perform its obligations under this Contract or violates any terms of this Contract and such failure is not cured within thirty (30) calendar days after receiving written notice thereof, the State shall have the right to terminate this Contract in accordance with Section D.4 hereof.

6. Documents Subject to Review. Upon request, the Contractor shall make all audit, accounting, or financial workpapers, notes and other documentation received or prepared by or on behalf of the Contractor under this Contract available for review by the State and/or the Comptroller of the Treasury or his representatives, upon request, during normal working hours.

7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Tennessee. This provision is not intended to prevent the Contractor from advertising the fact that the Contractor performed the services hereunder on behalf of the State.

8. Representations, Warranties, and Covenants of the Contractor. The Contractor hereby represents, warrants and covenants to the State as follows:

a. Enforceability. This Contract has been duly and validly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

b. No Conflicts. The execution and delivery by the Contractor of this Contract, the performance by the Contractor of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not (1) conflict with or result in the violation or breach of any of the terms, conditions or provisions of the charter or by-laws or other organizational documents of the Contractor, (2) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to the Contractor or any of its assets and properties or any contractual restriction of any kind binding or affecting the Contractor or any of its properties, or (3) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any material agreement to which the Contractor is a party, or any material obligation or responsibility which the Contractor has to any third party.

c. Approvals and Filings. On the Savings Plan Start Date (1) no consent, approval or action of, or filing with or notice to, any governmental or regulatory authority is required on the part of the Contractor in connection with the execution, delivery and performance of this Contract or the consummation of the transactions contemplated hereby, (2) no consent or approval of any other person, including the holders of any indebtedness or obligations of the Contractor is required on the part of the Contractor in connection with the execution, delivery and performance of this Contract or the consummation of the transactions contemplated hereby, and (3) any authorized delegatee or assignee of the Contractor has, or on the effective date of the delegation or assignment, will have, the full legal right, power and authority to perform the services delegated or assigned herein or hereafter to it, and no consent or approval of any governmental or regulatory authority or other person, and no action of, or filing with or notice to, any governmental or regulatory authority, is, or on the effective date of such delegation will be, required for the performance of such services by any such delegatee or assignee.

d. Year 2000 Compliance. The Contractor's computer systems will, under normal use and service, record, store, process and present calendar dates falling on or after January 1, 2000, in the same manner, and with the same functionality, data integrity and performance, as the Contractor's systems now record, store, process and present calendar dates falling on or before December 31, 1999, and the Contractor's systems will lose no material functionality with respect to the introduction of records containing dates falling before, on or after January 1, 2000. This representation and warranty covers, in addition to the Contractor, any delegates or assignees of any part of the services of this Contract and any other third parties with whom the Contractor may contract during the course of and exclusively for the purpose of the Contractor's providing

the services contemplated by this Contract, but excluding third parties (such as telephone companies, banks and broker-dealers) generally utilized by the Contractor in conducting its business. The Contractor represents and warrants that its computer systems, as well as its external and internal interfaces, equipment and forms, are and will be designed with the intent to prevent corruption of data relating to the Savings Plan resulting from third party communications with the Contractor's computer systems by any other system that is not Year 2000 compliant and that the Contractor will maintain secured backup copies of such data in a form that would not be subject to Year 2000 problems. The Contractor represents and warrants that the December 31, 1999 date change will not result in any loss to the State, the Savings Plan or to the Purchasers or Beneficiaries thereof arising from the services hereunder and the Contractor's computer systems. The Contractor shall indemnify the State, as well as its officers, agents, and employees for any costs or damages incurred due to lack of Year 2000 compliancy constituting a breach of the representations and warranties in this Section E.8.d.

e. Investment Advisers Act. The Contractor or any authorized delegatee or assignee of the Contractor which performs the investment advisory services under this Contract is a registered investment adviser under the Investment Advisers Act of 1940, as amended.

f. 1940 Act. If in the future the Trust Fund becomes required to register as an investment company under the Investment Company Act of 1940, as amended, then the Contractor shall with the cooperation of the State effect such registration in a timely manner at the expense of the Contractor.

9. Representations, Warranties, and Covenants of the State. The State hereby represents, warrants and covenants to the Contractor that this Contract has been duly and validly executed and delivered by the State and constitutes a legal, valid and binding obligation of the State enforceable against the State in accordance with its terms.

10. Back-Up Procedures and Disaster Recovery. The Contractor shall maintain contingency plans for systems back-up in the event of disaster or malfunction pursuant to Page 59 of the Contractor's Proposal. The Contractor shall resume services hereunder at its primary facilities within seventy-two (72) hours of the disaster or malfunction. The Contractor shall provide notification of an incident to the State within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.

11. Subcontracting. The State hereby acknowledges that the Contractor shall have the right to subcontract (i) services relating to marketing, information and distribution of the Savings Plan to its affiliates, Teachers Personal Investors Services, Inc. and TIAA-CREF Individual and Institutional Services, Inc., which are indirect wholly-owned subsidiaries of Teachers Insurance and Annuity Association of America ("TIAA"); (ii) transfer agency services required of the Contractor hereunder to Boston Financial Data Services, Inc. ("BFDS"); and (iii) custody, fund

accounting and certain administrative services required of the Contractor hereunder to State Street Bank and Trust Company. The consent of the State to Teachers Personal Investors Services, Inc. and TIAA-CREF Individual and Institutional Services, Inc. shall remain effective only so long as such entities are subsidiaries of TIAA. In addition, the consent of the State to BFDS shall remain effective only so long as that entity is jointly owned by State Street Bank and Trust Company and DST Systems, Inc.; provided, however, that if there is a change in control of BFDS and the State does not grant its consent to continued delegation to BFDS thereafter, then the Contractor shall have a commercially reasonable period of time to select and effect a transition to a new service provider of the services provided by BFDS.

The Contractor may subcontract for any of the services to be performed hereunder to other persons only with the prior written consent of the State, which consent will not be unreasonably withheld; provided, however, that the Contractor, without the consent of the State, shall be permitted to purchase goods and services from third party vendors, that are necessary to fulfill the obligations of the Contractor in connection with the operation of the Savings Plan and the provision of services hereunder. No subcontracting by the Contractor pursuant to this Section E.11 shall relieve the Contractor of any of its responsibilities hereunder, and the Contractor shall be responsible for the performance of services by its subcontractors and shall remain obligated hereunder as if no subcontracting had been made. The State shall have no liability to any subcontractor of the Contractor for any act or omission of the Contractor and the State shall be indemnified by the Contractor in accordance with Section D.14 as if no such subcontracting had been made. All contracts with subcontractors shall contain the provisions set forth in Sections D.6 and D.7 hereof.

12. Changes in Ownership. If at any time during this Contract the Contractor or any of its subcontractors (as defined in Section D.5 above) merge with another entity or a change of ownership is effected, the Contractor shall give written notice of such merger or change to the State within five (5) business days of receiving approval of such merger or change from the appropriate regulatory authorities. The Contractor agrees to give the State written notice within five (5) business days of filing for applicable regulatory approval if the status or viability of this Contract will be affected by such merger or change.

13. General Liability. The Contractor shall be liable to the State for any loss suffered by the State as a result of the Contractor's breach of this Contract or from any other cause while assets of the Trust Fund are in the possession or custody of the Contractor including, but not limited to, any loss of Trust Fund assets occasioned by reason of negligence of or robbery, burglary or theft by its employees, and any similar loss incurred while such assets are in another entity's possession or custody pursuant to this Contract and as approved by the State.

14. Insurance. The Contractor shall have such reasonable contracts of insurance covering the securities and funds which it holds or shall hold for the State as are customarily made with respect to property of a similar nature. The Contractor shall provide the State with copies of such contracts of insurance or certificates thereof and shall notify the State of any change in its insurance coverage. Further, the Contractor shall provide the State with thirty (30) calendar days advance notice of the cancellation of such insurance for any reason.

15. Transition of Services Upon Termination. Upon the natural expiration of this Contract or in the event of its termination for any reason, the Contractor shall transfer, in accordance with the State's instructions, all securities, cash, records and other property of the State to whomever the State may designate in writing to the Contractor. The Contractor agrees to cooperate with the State, and any subsequent contractor selected by the State to perform the services hereunder, in the transition and conversion of such services. The Contractor shall remain liable to the State under this Contract for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to the State or to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract occurring on or prior to the date on which all property of the State and all services hereunder have been successfully transferred or converted in accordance with this Paragraph.

16. Notices, Requests and Demands.

a. Method of Providing Notices. When any written notice, request, demand or other advice is requested or may be given hereunder, it shall be deemed sufficient if the party giving such notice, request, demand, or other advice delivers the same to the other party by U.S. mail, postage prepaid, or by other superior mailing, or by hand delivery. Notices, requests, demands or other advice may also be given or made by electronic transmission provided the transmission is verified by the party giving such notice, request, demand or other advice by calling the party to whom such notice is being given at the applicable telephone number listed in Exhibit I attached hereto. Notices, requests, demands or other advice may further be given or made by telephone and confirmed in writing.

(1) All notices, requests, demands or other advice delivered by mail or by hand shall be deemed to have been given when received by any party hereto at the addresses listed in Exhibit I attached hereto, or to such other addresses of which any party hereto shall have notified the other party hereto in writing.

(2) All notices, requests, demands or other advice transmitted by telefax shall be deemed to have been given when received by any party hereto via the telefax numbers listed in Exhibit I attached hereto, or to such other telefax numbers of which any party hereto shall have notified the

other party hereto in writing. For purposes of this Paragraph, the phrase "when received" shall mean when received mechanically by the telefax machine at the receiving location.

b. *Authorized Individuals.* Each party hereto has provided the other party hereto with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Said lists, which are attached hereto as Exhibit I, shall be valid until revoked or amended by further written notice. The parties hereto shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures as follows:

TIAA-CREF TUITION FINANCING, INC.

By: Timothy E. Lane
Timothy E. Lane, Vice President

Date: _____

DEPARTMENT OF TREASURY
STATE OF TENNESSEE

By: Steve Adams
Steve Adams, Treasurer & Chair
of the Board of Trustees

Date: 12/2/95

APPROVED:
DEPARTMENT OF FINANCE AND ADMINISTRATION
STATE OF TENNESSEE

John D. Ferguson, Au

By: _____
John D. Ferguson, Commissioner

Date: 12-03-99

APPROVED
COMPTROLLER OF THE TREASURY
STATE OF TENNESSEE

By: John G. Morgan
John G. Morgan, Comptroller

Date: 12/10/99

ANNEX A

AGE BANDS AND ALLOCATION GUIDELINES¹

Asset Allocation Percentages²

Age Bands	Year of Birth of Beneficiary ³	Investment Horizon ⁴	Institutional Growth Fund (Base Percentage of Age Band Assets)	Institutional Bond Fund (Base Percentage of Age Band Assets)	Institutional Money Market Fund (Base Percentage of Age Band Assets)
1	2000 or 2001	18 – 19 years	70%	30%	0%
2	1998 or 1999	16 – 17 years	65%	35%	0%
3	1996 or 1997	14 – 15 years	55%	45%	0%
4	1994 or 1995	12 – 13 years	45%	55%	0%
5	1992 or 1993	10 – 11 years	40%	60%	0%
6	1990 or 1991	8 – 9 years	35%	65%	0%
7	1988 or 1989	6 – 7 years	25%	70%	5%
8	1986 or 1987	4 – 5 years	15%	70%	15%
9	1984 or 1985	2 – 3 years	15%	40%	45 %
10	Pre-1984	Withdrawal Years	5%	40%	55%

¹ The State will annually review the Allocation Guidelines and make changes as needed.

² Under the Allocation Guidelines, the percentage of assets of an Age Band allocated to the Mutual Funds are to be in a range from 3% below to 3% above the base percentage of each Age Band; provided, however, that if there occurs a significant movement in the market (either up or down) that results in the percentage of assets of a Mutual Fund allocated to an Age Band being outside of the applicable Allocation Guideline range, the Contractor shall have a commercially reasonable period of time to bring the percentage of assets of such Mutual Fund allocated to such Age Band back within the applicable range, including without limitation, by divestitures or acquisitions of securities, taking into consideration relevant market factors and the benefits to Account Owners of minimizing transaction costs.

³ Every two years a new band will be added to capture current dates of birth with all bands moving down one level. The previous ninth band will be absorbed into the new tenth band.

⁴ Investment Horizon is the number of years before the beneficiary reaches age 18.

EXHIBIT I

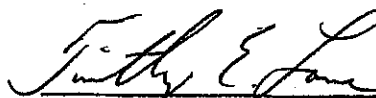
Pursuant to Section E.16.b. of the Contract between the State of Tennessee, Baccalaureate Education System Trust, hereinafter referred to as the "State", and TIAA-CREF Tuition Financing, Inc., hereinafter referred to as the "Contractor", each party has outlined below the respective addresses, telephone numbers and telefax numbers to which the other party is authorized to send or give any notices, requests, demands, or other advice which may be given under the Contract. This Exhibit I shall be valid until revoked or amended by further written notice.

The Contractor: TIAA-CREF Tuition Financing, Inc.
730 Third Avenue
New York, New York
Attention: Timothy E. Lane, Vice President
Tel: (212) 490-9000 x2437
Fax: (212) 916-6470
e-mail: tlane@tiaa-cref.org

TIAA-CREF Tuition Financing, Inc.
730 Third Avenue
New York, New York
Attention: Michael J. Noone, Director
Tel: (212) 490-9000 x2317
Fax: (212) 916-6030
e-mail: mnoone@tiaa-cref.org

With a copy (that will not constitute notice) to:
TIAA-CREF
730 Third Avenue
New York, New York 10017
Attention: General Counsel
Tel: (212) 916-4700
Fax: (212) 916-6230
e-mail: estamm@tiaa-cref.org

Date Effective

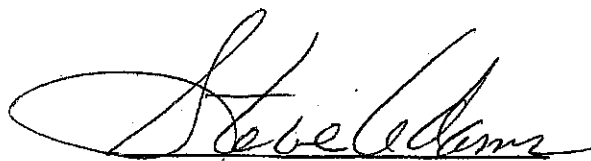

Timothy E. Lane, Vice President

The State: Tennessee Baccalaureate Education System Trust
Attention: Director
1340 Andrew Jackson State Office Building
500 Deaderick Street
Nashville, Tennessee 37243-0253
Tel: (615) 532-2992
Fax: (615) 916-6230

Tennessee Baccalaureate Education System Trust
Attention: Marketing Manager
1340 Andrew Jackson State Office Building
500 Deaderick Street
Nashville, Tennessee 37243-0253
Tel: (615) 532-5890
Fax: (615) 734-6467

12/2/95

Date Effective


Steve Adams, State Treasurer &
Chair of the Board of Trustees